82-1758

No. ____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

KEITH MILTON RHINEHART, *et al.*,
Petitioners,

v.

THE SEATTLE TIMES,
a Delaware corporation,
d/b/a The Seattle Times, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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QUESTION PRESENTED FOR REVIEW

Does the free exercise of religion clause of the first amendment preclude a state court from ordering a minority church and its spiritual leader to divulge names of members and donors in response to a pretrail discovery request by the defendant newspaper in a common law libel action, where the church and its leader have been the target of physical and verbal attacks following defendants' publication of articles ridiculing the church and its leader?

PARTIES TO THE PROCEEDING BELOW

The petitioners in this Court are the Aquarian Foundation, Keith Milton Rhinehart, and Kathi Bailey. Reverend Rhinehart and the Aquarian Foundation, together with Kathi Bailey, Lillian Young, Toni Strauch, Sylvia Corwin, and Ilse Taylor, were plaintiffs in the trial court and respondents in the Washington Supreme Court. The petitioners in the Washington Supreme Court, who were defendants in the trial court, were The Seattle Times, a Delaware corporation, d/b/a The Seattle Times, Walla Walla Union-Bulletin, Inc., Erik Lacitis and Jane Doe Lacitis, and John McCoy and Karen McCoy. KIRO, Inc. appeared as amicus curiae in the Washington Supreme Court.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Keith Milton Rhinehart, Kathi Bailey, and the Aquarian Foundation, a Washington not-for-profit corporation, petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Washington in this case.

OPINIONS BELOW

The opinion of the Washington Supreme Court (Appendix A) is reported at 98 Wn.2d 226, 654 P.2d 673 (1982). The Letter Decision and the Order Compelling Discovery issued by the Superior Court of Washington for King County (Appendices D and G) are unreported.

JURISDICTION

The decision of the Washington Supreme Court was entered on December 2, 1982, and a timely Motion for Reconsideration was denied on January 27, 1983. (Appendix B) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Amendment I. Religion Clause:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

Amendment XIV. § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. Procedural History.

The American Foundation, Reverend Keith Milton Rhinehart, and other members of the Foundation brought this libel action against the Seattle Times, the Walla Walla Union-Bulletin, and three reporters. The trial court ordered the Aquarian Foundation and Reverend Rhinehart to answer interrogatories by the Seattle Times asking for the identity of members of the Aquarian Foundation and donors to the Foundation and Re-

verend Rhinehart. (App. D, *infra*, 56a-57a) The trial court imposed a protective order, under which the Seattle Times could not publish the information learned through discovery. (Clerk's Papers 25-26) (The Clerk's Papers were the record on which the Washington Supreme Court decided the case.)

The Washington Supreme Court granted discretionary review of both the Order Compelling Discovery and the Protective Order. (App. C, *infra*, 53a) The Washington court affirmed both orders. (App. A, *infra*, 33a)

2. Factual Background.

The Aquarian Foundation is a Spiritualist church incorporated in 1955 which holds regular weekly services in Seattle and other cities. (Clerk's Papers 489, 499, 516-17) The Aquarian Foundation is a minority church in that it has less than one thousand members and some of its beliefs are unpopular. (Second Supplemental Clerk's Papers 123-24) Reverend Rhinehart is the spiritual leader of the Foundation, and Kathi Bailey is an assistant spiritual leader. (Second Supplemental Clerk's Papers 69) (Clerk's Papers 495-96)

Beginning in 1973, the Seattle Times published a series of articles ridiculing and denigrating the Aquarian Foundation and Reverend Rhinehart. Ten such articles are identified in the complaint. (App. H, *infra*, 90a) The following statements are representative of the allegations published by the Seattle Times: The Aquarian Foundation is a Jim Jones-Guyana-like "bizzare Seattle cult" which is the alter ego of Keith Milton Rhinehart, "cult leader"; the main emphasis of the Foundation is on homosexuality; Reverend Rhinehart "play[s] at spiritualism"; and the spiritual phenomena exhibited by Reverend Rhinehart are consciously perpetrated frauds and

"sleights-of-hand." (App. H, *infra*, 93a-95a) The Seattle Times also falsely reported that the women in the church choir wantonly exposed their genitalia before hundreds of male prisoners at Walla Walla State Penitentiary, and that television superhero Lou Ferrigno, model for American youth, so feared Reverend Rhinehart that he positioned his father in the audience during a sermon with a gun ready to blow Reverend Rhinehart's head off if anything happened to Lou Ferrigno. (App. H., *infra*, 92a-93a)

The Seattle Times articles succeeded in discrediting the Aquarian Foundation, Reverend Rhinehart, and the members of the Foundation. Membership of the Foundation declined following publication. (App. F, *infra*, 69a-71a) After the articles appeared, members of the Foundation were assaulted, cursed and threatened. An unknown assailant fire-bombed the Seattle church, two men attacked and wounded an elderly female church member on the doorstep of the Foundation, and threats were made in person and by telephone against Reverend Rhinehart and other members of the Foundation. (Second Supplemental Clerk's Papers 8-29) Both Seattle Police and FBI agents have advised Reverend Rhinehart to keep his residence a closely-guarded secret to minimize further personal danger. (Supplemental Clerk's Papers 36-37) Reverend Rhinehart was forced to leave his Seattle home out of concern for his safety. (Clerk's Papers 503). Security measures adopted to protect Reverend Rhinehart severely hampered his ability to function as spiritual leader of the church. (*Id.*)

3. The Federal Question Was Timely and Properly Raised.

The Seattle Times directed interrogatories to the Aquarian Foundation and each individual plaintiff, demanding to know the identity of everyone who

had been a member of the Foundation at any time in the past ten years. The Foundation responded:

> Plaintiff objects to stating names and addresses of all members of the Aquarian Foundation for the past ten years, on the grounds that it believes names of members are constitutionally protected under the first amendment.

(Clerk's Papers 515) The Foundation also refused to list all donors, stating that, "by revealing names and addresses of donors the defendants would have access to names of all members." (Clerk's Papers 512) Reverend Rhinehart similarly refused to identify members of the Aquarian Foundation:

> Plaintiff hereby enters his objection to the form and content of Defendants' Interrogatory No. 31. Plaintiff's objection is founded upon the constitutional right to privacy of each member of the Aquarian Foundation and their right and privilege to exercise freedom of religious choice protected by the United States Constitution and the Constitution of the State of Washington.
>
> . . . Any response to this interrogatory would interfere with privileged information of the Foundation, and severely chill the right of members to freely exercise the religious beliefs of their choice.

(Clerk's Papers 475)

The trial court ordered the Aquarian Foundation to identify all donors. (App. G, *infra*, 77a-78a) The court did not immediately order the Foundation to identify all members, but instead extended to the Foundation the option of providing information by which the defendants could be advised of the basis on which the plaintiffs will attempt to prove a claim of diminished membership. (App. G. *infra*, 78a) The court extended the same option

to Reverend Rhinehart. (*Id.*, 74a-75a) The court also permitted Reverend Rhinehart to file a supplemental response stating specifically why he should not be ordered to identify all persons who had donated any money to him in the past ten years. (*Id.*, 73a-74a)

The Aquarian Foundation stated in a supplemental answer that it did not have detailed information of dates and amounts or circumstances of each gift by donor. The Foundation also objected that revealing this information would violate a pledge of secrecy made to the donors, and would violate the members' rights to privacy, freedom of religion and freedom of association. (App. F, *infra*, 68a-69a) Rather than provide the names of members, the Foundation estimated the total number of members for each calendar quarter by dividing the total dollar amount of membership dues by the fee charged each member. (App. F, *infra*, 69a-71a)

Reverend Rhinehart also filed supplemental responses in which he declined to identify donors or members, stating in part:

> To provide the information you request with respect to the donors would violate the donors' rights to privacy, freedom of religion, and freedom of association. In addition, as a matter of conscience based on my religious faith, the disclosure would violate the members' rights to privacy, freedom of religion, and freedom of association which are considered to be a fundamental part of the Aquarian Foundation's religious beliefs.

(App. E, *infra*, 61a-62a)

The trial court considered the supplemental answers, and ordered the Aquarian Foundation, Reverend Rhinehart and Kathi Bailey to identify any donors during

the five years preceding the date of the complaint. (App. D, *infra*, 56a-58a) The trial court declined to order either the Foundation or Reverend Rhinehart to identify all members. Rather, the court ordered the Foundation to produce the documentary evidence of total membership dues by which the Foundation had estimated total membership, and to produce for a deposition the bookkeeper who computed the estimates. The trial court left open the possibility that it might order disclosure of additional information following the deposition. (App. D, *infra*, 56a)

The Petitioners argued in the Washington Supreme Court:

> The rights of privacy and of freedom of religion and freedom of association guaranteed by the federal and state constitutions protect the names and addresses of a religious association's members and donors from disclosure.

(Brief of Respondents for Defendants' Review and Brief of Petitioner for Plaintiffs' Review 54)

The Washington Supreme Court affirmed the order compelling discovery without discussing the federal constitutional issue. The court devoted most of its opinion to the Seattle Times appeal of the protective order. The Supreme Court simply held that the order compelling discovery was not in abuse of discretion:

> Turning to the plaintiffs' cross-appeal, the major contention is that requiring disclosure of membership lists, donors and benefactors violates the rights of privacy and the associational rights of these persons. As should be clear from our previous discussion, certain invasions of those rights are necessary to enable the courts to render a just decision upon the relevant facts. The protective order shields the plaintiffs from abuse of the discovery privilege.

> The more extensive protection which they desire is within the discretion of the trial court in a proper case; but the plaintiffs are not entitled to such an order as a matter of right. There is no showing that the protective order is inadequate to prevent any abuse threatened by the defendants.

(App. A, *infra*, 32a)

REASONS FOR GRANTING THE WRIT

This Court has never before considered the circumstances under which an arm of the government may constitutionally require a church to open its membership rolls and financial records to the hostile scrutiny of a third party. This case presents an important question of federal law which has not been, but should be, settled by this Court. Supreme Court Rule 17.1(c). The Court should grant the petition and review the decision of the Washington Supreme Court.

Identification of the donors and members of a church directly impacts on the free exercise of religion by targeting donors or members for harassment or criticism. If the court can order disclosure in this case, nothing prevents the state from invading the sacristy or synagogue to riffle through confidential records of membership and finances. The disclosure ordered in this case will further restrict the free exercise of religion, since the church leaders have pledged never to reveal the names of members and donors without their permission, and the church leaders believe that revelation of this information "would require us to violate the precepts of the church. . . ." (App. F, *infra*, 67a)

The decision of the Washington Supreme Court ignores the first amendment right of every donor to the Aquarian Foundation to preserve that donor's privacy and maintain

the confidentiality of associational ties. Many people have contributed to the Foundation because they agreed with its spiritual teachings, secure in the belief that their gift would not be exposed to public scrutiny. The first amendment guarantees that these donors need not fear that their connection with the Foundation will be divulged to unsympathetic members of the public, including the largest newspaper in the state of Washington, a medium which has repeatedly proven its hostility to the Aquarian Foundation and its beliefs. Revelation of this information may well destroy careers, subject innocent donors to abuse, and will certainly deter these donors and others from freely exercising their first amendment rights to associate with a church of their choice.

The constitutionality of compelled disclosure of church members and donors is a recurrent problem which should be resolved by this Court. *See Surinach* v. *Pesquera de Busquets*, 604 F.2d 73 (1st Cir. 1979); *In re Rabbinical Seminary*, 450 F. Supp. 1078 (E.D.N.Y. 1978); *Church of Hakeem, Inc.* v. *Superior Court*, 110 Cal. App. 384, 168 Cal. Rptr. 13 (1980). The same troubling issue arises repeatedly outside the religious context, when a secular organization or individual is asked in pretrial discovery or grand jury proceedings to divulge membership or associational ties. *Black Panther Party* v. *Smith*, 661 F.2d 1243 (D.C. Cir. 1981), *vacated*, 102 S. Ct. 3505 (1982); *Hastings* v. *North East Independent School District*, 615 F.2d 628 (5th Cir. 1980); *Ealy* v. *Littlejohn*, 569 F.2d 219 (5th Cir. 1978); *Familias Unidas* v. *Briscoe*, 544 F.2d 182 (5th Cir. 1976); *Bursey* v. *United States*, 466 F.2d 1059 (9th Cir. 1972); *Britt* v. *Superior Court*, 20 Cal. 3d 844, 143 Cal. Rptr. 695 (1978).

In each of the cases cited in the preceding paragraph, the appellate court reversed a lower court decision to

compel disclosure of associational ties, holding that the first amendment precluded such discovery. (The sole exception is *In re Rabbinical Seminary*, an unappealed determination by the trial court that a seminary must produce financial records directly relevant to a grand jury investigation of criminal activity, where there was no showing that any harm would result.) The decision of the Washington Supreme Court conflicts with the decisions of all federal circuit courts which have confronted the issue, as well as the California Supreme Court. This Court should grant review to correct this aberration. Supreme Court Rule 17.1(b).

Although this Court has never confronted the specific issue raised in this case, the Court's prior decisions respecting the religion clause set forth the general principles governing this area. The free exercise of religion clause applies to the states through the due process clause of the fourteenth amendment. *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940).

The first amendment prohibits the state from infringing upon the free exercise of religion unless three conditions are satisfied. First, the state can infringe upon the free exercise of religion only to advance an interest which is "compelling," or "of the highest order." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972); *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963). Second, the state's interest must be substantially advanced by the particular infringement upon the free exercise of religion. *Larson* v. *Valente*, 456 U.S. 228 (1982). Third, the state must justify any inroad on religious liberty by showing that it is the least restrictive means of achieving the compelling state interest. *Thomas* v. *Review Board*, 450 U.S. 707, 718 (1981).

This Court has applied these same three tests outside the religious context, when the state seeks disclosure of

membership in secular organizations. *Brown* v. *Socialist Workers*, 74 L. Ed. 2d 250 (1982); *Buckley* v. *Valeo*, 424 U.S. 1 (1976); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

The discovery order here should be subjected to these three tests. This order should be subjected to particularly strict scrutiny, because disclosure of donors and members of a church is a serious inroad upon the free exercise of religion and carries the seeds of grave abuse. Members of a church should not be forced to wear upon their sleeve the symbol of their religion, making it easier for their foe to harass them. *See NAACP* v. *Alabama*, 357 U.S. at 462.

This discovery order fails all three tests. The state interest in insuring fair trial through full pretrial discovery is not sufficiently compelling to overcome the first amendment rights of the Aquarian Foundation and its members. This Court recognized in *NAACP* v. *Alabama* that even an important state interest may not be sufficiently compelling to justify disclosure of members of an organization where the organization has shown that disclosure may subject its members to reprisal. 357 U.S. at 462-66. In *Buckley* v. *Valeo*, the Court pointed out that disclosure can be particularly devastating to a minority organization, and that the first amendment might prohibit disclosure where a minority organization could establish a real possibility of reprisal following disclosure. 424 U.S. at 71-72.

Most recently, the Court held in *Brown* v. *Socialist Workers* that a minority party had shown "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harass-

ment, or reprisals from either Government officials or private parties." 74 L. Ed. 2d at 257 (quoting from *Buckley* v. *Valeo*, 424 U.S. at 74). The Socialist Workers Party (SWP) had introduced proof of specific incidents of private and government hostility towards the party, including threatening phone calls, hate mail, destruction of property, police harassment of a candidate, and the firing of shots at an SWP office. 74 L. Ed. 2d at 261. This Court affirmed the district court determination that the SWP could not be compelled to disclose the name of each of its donors.

This case is the next logical step in the line of authority developed by this Court in *NAACP* v. *Alabama*, *Buckley* v. *Valeo*, and *Brown* v. *Socialist Workers*. The Court should decide the extent to which these same principles apply to discovery requests directed against a minority religious group such as the Aquarian Foundation. The Aquarian Foundation has clearly shown a substantial probability that disclosure of the names of donors will result in threats, harassment, and reprisals. The Foundation introduced evidence that following publication by the Seattle Times of articles critical of the Foundation, the church, Reverend Rhinehart and members were the targets of death threats, obscene telephone calls, physical assault, fire-bombing, and threats by armed individuals. (Second Supplemental Clerk's Papers 8-29)

The protective order does not adequately shield the donors from abuse and threats. The Seattle Times has proven its hostility to the Foundation and Reverend Rhinehart by repeatedly ridiculing them in its articles. One may as well house the lion with the lamb with an admonition to eat only straw, *cf.* Isaiah 65:25, as to tell the Seattle Times not to expose the Foundation's donors to any further harmful publicity or defamatory criticism.

The protective order provides that the Seattle Times may only use the information provided by the Foundation to prepare and try the case, but permits the Times to publish any information gained outside the discovery processes. (Clerk's Papers 25-26) This provides little comfort, as disclosure of the names of donors and members at public trial is equally a violation of these persons' associational rights, rights of privacy, and free exercise of their religion. In any event, the protective order does not prevent the Times from targeting donors for additional investigative reporting, and ultimately destroying the Aquarian Foundation by ridiculing its contributors. One must question whether the Seattle Times will honor the protective order. The Times has consistently taken the position that the protective order is an invalid prior restraint, and that it may publish whatever it learns through discovery. (Clerk's Papers 325-35) The Seattle Times has already tried to evade a promise made by its own attorney to maintain the confidentiality of sensitive financial information provided by Reverend Rhinehart in this same lawsuit. The Times attorney promised confidentiality, but the Times then resisted Reverend Rhinehart's request for a court order to protect this information. (App. A, *infra*, 3a)

Even if the first test were met and this Court should hold that the state's interest in insuring fair trial were sufficiently compelling to override the Foundation's donors' first amendment rights and to justify exposing them to possible harassment, the discovery order would still fail to meet the second test used by this Court. It fails to meet this second test because the discovery order does not substantially further the state's interest in insuring a fair trial. The church cannot provide the information without violating an oath of confidentiality and the religious tenets of the church. (App. F, *infra*, 67a) The

inevitable effect of the order will be to force the Aquarian Foundation to abandon its lawsuit. Thus, the effect of this order will be to destroy the Foundation's right to a fair trial, just the opposite of the state interest deemed to be compelling. The state's interest in securing a fair trial will not be furthered by a policy which will deny the courts completely to minority religious groups and other unpopular associations by requiring these organizations to disclose their members and donors.

Full pretrial discovery is not essential to achieve the state interest in insuring a fair trial. As the Washington Supreme Court pointed out in its opinion, full pretrial discovery is a relatively recent innovation, unavailable at the common law. (App. A, *infra*, 6a-7a) The court can insure a fair trial by permitting discovery and full cross-examination only as to the evidence which the Aquarian Foundation uses to prove its claims. The court need not permit a wide-reaching fishing expedition into the names and addresses of all donors.

The discovery order fails the third test as well, because less onerous means exist to achieve full pretrial discovery of relevant information. The Aquarian Foundation has computed its decline in membership based on its financial records. (App. F, *infra*, 69a-71a) The Foundation agreed to make this documentary evidence available to the Seattle Times *(Id.)* and the trial court ordered the Foundation to make available for deposition the bookkeeper who performed the computations (App. D, *infra*, 56a). This alternative is far less intrusive upon the first amendment rights of the members and donors of the Aquarian Foundation and adequately protects the Seattle Times.

The religion clause of the first amendment was the result of a struggle for religious liberty which included resistance to the compelled public registration of adhe-

rents of minority religions. A. Newman, *History of the Baptist Churches in the United States* 173-74, 352-62 (3d ed. 1900) This Court should clearly hold that only the most compelling circumstances can justify a return to the mandatory disclosure of minority church membership of the colonial certificate laws.

Review by this Court of the Order Compelling Discovery is particularly appropriate because neither the trial court nor the Washington Supreme Court confronted the first amendment issues involved or attempted to apply the three tests set out in this Court's prior decisions. The Aquarian Foundation and Reverend Rhinehart repeatedly set forth their first amendment objections to the Seattle Times interrogatories regarding the identity of members and donors, both in the trial court and in the Washington Supreme Court. (*See* pages 4-7, *supra*.) Since the state courts have failed to weigh plaintiffs' first amendment claims, this Court should accept review both to decide the circumstances under which a church must reveal names of members and donors and to protect the plaintiffs' fundamental first amendment right to exercise freely their religious beliefs.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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April, 1983

APPENDIX

APPENDIX

APPENDIX A

[Nos. 47938-1, 48155-5. En Banc. December 2, 1982.]

KEITH MILTON RHINEHART, ET AL., *Respondents*, v. THE SEATTLE TIMES COMPANY, ET AL, *Petitioners*.

[1] **Discovery — Constitutional Law — Freedom of Press — Information Obtained Through Discovery — Protective Order — Validity — Factors.** CR 26(c), which permits a trial court to forbid publication of information obtained through discovery upon a showing of "good cause," is constitutional. The First Amendment does not give the news media more right to use information obtained during discovery than any other litigant. To determine if "good cause" exists for a protective order, the court must balance the interests served by protecting the confidentiality of the information (*e.g.*, ensuring the full and truthful disclosure of relevant facts and protecting individuals' legitimate privacy interests in avoiding unwanted publicity) against the interests served by allowing publication of the information (*e.g.*, informing the public of matters of legitimate public concern) under the circumstances. The trial court's decision regarding the issuance of a protective order is reviewed for an abuse of discretion.

[2] **Discovery — Scope — Effect on Constitutional Rights — Protective Order.** The scope of discovery is a matter within the trial court's discretion. Any adverse impact which disclosure has on individual privacy and associational rights may be minimized by issuance of a protective order under CR 26(c).

DOLLIVER, J., BRACHTENBACH, C.J., and DIMMICK, J., concur by separate opinion; UTTER and PEARSON, JJ., dissent by separate opinion.

Nature of Action: In an action against two newspapers

seeking damages for defamation and invasion of privacy, the plaintiffs refused to disclose certain information requested during discovery.

Superior Court: The Superior Court for King County, No. 80-2-02460-4, Jack P. Scholfield, J., on June 26, 1981, entered an order compelling discovery and a protective order prohibiting the newspapers from publishing the information acquired through discovery.

Supreme Court: Holding that under the circumstances the protective order did not deny the newspapers freedom of the press or freedom of speech and was adequate to safeguard the plaintiffs' privacy and associational interests, the court *affirms* the orders.

Davis, Wright, Todd, Riese & Jones, by *Evan L. Schwab* and *Bruce E. H. Johnson*, for petitioners.

Edwards & Barbieri, by *Malcolm L. Edwards* and *Robert G. Sieh*, for respondents.

Gordon G. Conger, Robert B. Mitchell, and *Susan D. Jones* on behalf of KIRO, Inc., amici curiae for petitioners.

[As amended by order of the Supreme Court December 13, 1982.]

ROSELLINI, J.—The Seattle Times published stories concerning the Aquarian Foundation and its leader, Rhinehart, who founded the organization in the 1950's. Articles about the foundation, a "spiritualist church", also appeared in the Walla Walla Union-Bulletin, describing some bizarre performances which were presented at a "religious presentation" staged for inmates at the state penitentiary at Walla Walla.

Rhinehart brought this action on behalf of himself and the foundation, seeking damages for defamation and invasion of privacy. He was joined by four members who participated in the Walla Walla presentation.

The defendants denied many of the allegations and

asserted affirmative defenses including claims of privilege. They undertook discovery with respect to the plaintiffs' financial affairs, membership and donors. This information was relevant upon the issues of truth and damages. It appears that the attorney for the defendants assured counsel for the plaintiffs that financial materials disclosed to him would be kept confidential. The defendants were provided with income tax returns of Rhinehart and some financial information relating to the other plaintiffs. The plaintiffs refused, however, to disclose other desired information, such as the present address of Rhinehart, who allegedly had fled the state because of threats to his life resulting from the publicity given the foundation by the defendants.

The defendants sought and were granted an order compelling discovery, and the plaintiffs obtained a protective order limiting the use which could be made of information derived through the discovery process. The order provided:

> 3. The defendants and each of them shall make no use of and shall not disseminate the information . . . which is gained through discovery, other than such use as is necessary in order for the discovering party to prepare and try the case. As a result, information gained by a defendant through the discovery process may not be published by any of the defendants or made available to any news media for publication or dissemination. This protective order has no application except to information gained by the defendants through the use of the discovery processes.

Clerk's Papers, at 26.

The plaintiffs objected to the order compelling discovery on the grounds that it invaded their right to privacy and freedoms of religion and association. The defendants attacked the protective order on the ground that it denied them freedom of the press and of speech, guaranteed by the first amendment to the United States Constitution and by Const. art. 1, § 5.

The trial court filed a memorandum opinion explaining the protective order. In that opinion it found that the

defendants were entitled to make discovery under Superior Court Civil Rule 26(b)(1) and that the plaintiffs had reasonable grounds for the issuance of a protective order in connection with information covered by the order. It also observed that if protective orders were not available, "it could have a chilling effect on a party's willingness to bring his case to court." The court said:

> If the absence of a Protective Order has the effect of denying a party access to the courts, this would be a result just as damaging to justice and to individual rights as can result from an impingement upon First Amendment rights. I would put access to the courts on an equal plane of importance with freedom of the press because it is through the courts that our fundamental freedoms are protected and enforced.

Clerk's Papers, at 63.

Both of the court's orders are before us on this discretionary review.

The gist of the defendants' theory in attacking the protective order is that CR 26(c) is unconstitutional insofar as it permits the court to limit the use which the press or its members can make of information which they have received through discovery, upon a mere showing of "good cause".

[1] Under the federal constitution, persons engaged in the business or profession of publishing or otherwise communicating with the public are entitled to no greater protection than citizens who are not so engaged. Their right of access to information within the control of the government is the same. *Houchins v. KQED, Inc.*, 438 U.S. 1, 57 L. Ed. 2d 553, 98 S. Ct. 2588 (1978) (access to jails); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 55 L. Ed. 2d 570, 98 S. Ct. 1306 (1978) (access to tapes not placed in evidence at trial); *Pell v. Procunier*, 417 U.S. 817, 41 L. Ed. 2d 495, 94 S. Ct. 2800 (1974) (access to prisons and inmates). *See Estes v. Texas*, 381 U.S. 532, 589, 14 L. Ed. 2d 543, 85 S. Ct. 1628 (1965) (Harlan, J., concurring).

Nor is there any basis for holding that a publisher, when he is a party to litigation, enjoys a greater immunity from

protective orders than do other litigants, as the defendants would have us hold. Neither the first and fourteenth amendments to the United States Constitution nor article 1, section 5 of our state constitution makes any distinction among citizens in conferring their protections.

Therefore, whatever power the courts have to enter protective orders to forestall the giving of unwanted publicity to the fruits of discovery, that power extends to all litigants.

The defendants maintain that a protective order which forbids publication of matters learned through discovery constitutes a "prior restraint on expression" which, while not unconstitutional per se, bears a "heavy presumption" against its validity. *See Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 43 L. Ed. 2d 448, 95 S. Ct. 1239 (1975). The Supreme Court in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 49 L. Ed. 2d 683, 96 S. Ct. 2791 (1976) indicated that prior restraints "are the most serious and the least tolerable infringement on First Amendment rights." At common law the term "prior restraint" referred to a system of unreviewable administrative censorship or licensing. But the meaning has been extended through a long line of cases beginning with *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931) to include judicial orders having an impact similar to administrative censorship.

The order here does restrain the publication of certain matters, although the restraint as to those items which are later admitted into evidence will terminate at that time. The restraint is not inspired by any governmental objection to the content of the publication, and the subject matter involves no element of advocacy or dissemination of ideas. We would be inclined to the view that these facts should lighten the burden of justifying the restraint. However, the United States Supreme Court has found prior restraints where the only matter involved was evidentiary materials derived from judicial proceedings. *See Nebraska Press Ass'n v. Stuart, supra; Smith v. Daily Mail Pub'g Co.*, 443

U.S. 97, 61 L. Ed. 2d 399, 99 S. Ct. 2667 (1979).

We do not believe that the prior restraint doctrine applies to protective orders. We do not reach this issue, however, because even under the prior restraint doctrine protective orders can be justified. Under this doctrine the burden of justifying the restraint rests primarily upon this court, inasmuch as it results from the implementation of CR 26(c), which we have adopted, using the federal rules (Fed. R. Civ. P. 26(c)) as its basis.

We must look then to the reasons for the rule and the nature of the interests involved to see if it is justified.

As the Supreme Court directed in *Nebraska Press Ass'n*, we must also examine whether the order here furthers those purposes and interests, whether other measures would be likely to mitigate the effects of the unwanted publicity involved here; and how effectively the protective order would operate to prevent the threatened harm.

With respect to the possibility of mitigation by other measures, the defendants suggest nothing other than denial of discovery altogether, which is admittedly within the power of the court. Since this would have the effect of closing access to the material sought to be published and denying the defendants the benefits of discovery, it is not a satisfactory alternative. As for the effectiveness of the protective order, it must be assumed that the defendants will abide by the court's order and, as will appear later, the evil against which the rule is directed is a litigant's disclosure of information furnished him in the discovery process. Our main inquiry, therefore, will concern the interests which justify a rule which authorizes protective orders in circumstances such as these. Such orders are meant to protect the health and integrity of the discovery process, as much as to protect the parties who participate in it.

CR 26 pertains to depositions and discovery. At common law opportunities for discovery were limited, as a result of which it was often said that trials were conducted "by ambush". Propounding interrogatories and obtaining documents were not authorized. *State ex rel. Bronson v. Supe-*

rior Court, 194 Wash. 339, 77 P.2d 997 (1938); *Puget Sound Nav. Co. v. Associated Oil Co.*, 56 F.2d 605 (W.D. Wash. 1932). Some discovery was allowed in equity, but it did not come into its full flower until the promulgation of the federal rules and the adoption of these rules by the states. It is not disputed that without CR 26 the petitioners would have no right of access to the information which they claim a constitutional right to publish.

CR 26(b)(1) allows a broad scope of discovery, the only restrictions being that the matter must be relevant and not privileged. CR 26(c) provides that upon "good cause shown" the court may make "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense". There is no dispute that this authorization is broad enough to permit the court to restrain use of discovery information for unauthorized purposes. The purpose of the rule is to enable the parties to prepare their cases for trial.

Chief Justice Warren, in a foreword to W. Glaser, *Pretrial Discovery and the Adversary System* (1968) said:

> The pretrial discovery rules have attempted to remove secrecy and surprise from the trial, thus presenting the fact-finder with a less dramatic, but more accurate, presentation of information. Proponents assert that the rules have proved successful in this regard. Yet there has been widespread debate and disagreement about whether the discovery rules, on balance, have improved the adversary system. Critics have doubted whether the benefits have been achieved, and have charged that discovery is unduly expensive and promotes delay and harassment.

It is toward the amelioration of these problems, among others, that CR 26(c), providing for protective orders, was directed. Under this rule the trial court exercises a broad discretion to manage the discovery process in a fashion that will implement the goal of full disclosure of relevant information and at the same time afford the participants protection against harmful side effects. 4 J. Moore, *Federal Practice* ¶ 26.67, at 26–487 (2d ed. 1982). Unfavorable publicity is one of such "harmful side effects". 4 J. Moore,

supra ¶ 26.73; *see also* ¶ 26.74.

In *International Prods. Corp. v. Koons*, 325 F.2d 403, 407 (2d Cir. 1963), the Second Circuit Court of Appeals, speaking through Judge Friendly, said:

> [W]e entertain no doubt as to the constitutionality of a rule allowing a federal court to forbid the publicizing, in advance of trial, of information obtained by one party from another by use of the court's processes.[1]

In *National Polymer Prods., Inc. v. Borg-Warner Corp.*, 641 F.2d 418, 424 (6th Cir. 1981) (a case in which the parties had consented to a protective order), the Court of Appeals said:

> An important purpose of a pre-trial protective order is to preserve the confidentiality of materials which are revealed in discovery but not made public by trial.

As for matters which were admitted in evidence at the trial, however, the court held that the right to publish these, once they had become a matter of public record, was protected by the First Amendment, although the right could be waived. *See also Nichols v. Philadelphia Tribune Co.*, 22 F.R.D. 89 (E.D. Pa. 1958).

Martindell v. ITT, 594 F.2d 291 (2d Cir. 1979) was a civil suit in which the federal government attempted to gain access to depositions of witnesses for criminal investigative purposes. Holding that the lower court correctly withheld these depositions in order to protect the witnesses' Fifth Amendment rights and to enforce a stipulation that the information should remain confidential, the Court of Appeals said:

> These [the government's] arguments ignore a more significant counterbalancing factor—the vital function of a protective order issued under Rule 26(c), F.R.Civ.P., which is to "secure the just, speedy, and inexpensive determination" of civil disputes, Rule 1, F.R.Civ.P., by

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[1] A more restrictive view was taken by two members of a 3-judge panel of the District of Columbia Court of Appeals in *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979), strongly relied upon by the defendants here. That case and others which have adopted its holding will be discussed later.

> encouraging full disclosure of all evidence that might conceivably be relevant. This objective represents the cornerstone of our administration of civil justice. Unless a valid Rule 26(c) protective order is to be fully and fairly enforceable, witnesses relying upon such orders will be inhibited from giving essential testimony in civil litigation, thus undermining a procedural system that has been successfully developed over the years for disposition of civil differences. In short, witnesses might be expected frequently to refuse to testify pursuant to protective orders if their testimony were to be made available to the Government for criminal investigatory purposes in disregard of those orders.

Martindell, at 295–96.

That same court said in *Galella v. Onassis*, 487 F.2d 986 (2d Cir. 1973) that the grant and nature of protection is singularly within the discretion of the trial court and may be reversed only on a clear showing of abuse of discretion.

In order to prevent the revelation of trade secrets, a court may properly exact from the party seeking this information assurances under oath that none of the information obtained will be divulged except in the course of judicial proceedings. *Paul v. Sinnott*, 217 F. Supp. 84 (W.D. Pa. 1963).[2]

Thus, the rule has generally been given effect according

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[2]In some areas of litigation, public policy favors public disclosure of information derived in the discovery process. Congress has expressly provided that in the taking of depositions for use in "any suit in equity brought by the United States under sections 1–7 of this title, . . . the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable." 15 U.S.C. § 30 (1958). The Ninth Circuit has found this policy applicable to other forms of discovery and in private antitrust suits as well, because "[p]rivate treble-damage actions are an important component of the public interest in 'vigilant enforcement of the antitrust laws" (citing *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 329, 99 L. Ed. 1122, 75 S. Ct. 865 (1955)). *Olympic Ref. Co. v. Carter*, 332 F.2d 260, 264 (9th Cir. 1964).

However, it was held in *D'Ippolito v. American Oil Co.*, 272 F. Supp. 310 (S.D.N.Y. 1967) that this statute does not apply to actions commenced by private litigants. And in *United States v. IBM*, 87 F.R.D. 411 (S.D.N.Y. 1980), it was recognized that even where the government brings the action, the public may be excluded under appropriate circumstances and protective orders may be entered.

to the import of its words. The issuance of protective orders is within the discretion of the trial court, to be granted where, in its judgment, good cause exists, having in mind the purpose of the discovery rule to encourage full disclosure of all relevant facts so as to facilitate the administration of justice, acquaint the examiner with the testimony that will be given at trial, develop the truth, shorten and simplify the trial, eliminate elements of surprise, and permit the parties to prepare for trial.

Nowhere in the history of the rules or in the commentaries which we have read upon them can we find any indication that the purposes included that of disseminating to the general public the information derived from discovery, or any suggestion that such dissemination would serve the ends sought to be achieved by the rule. Chief Justice Burger, concurring in *Gannett Co. v. DePasquale*, 443 U.S. 368, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (1979), made this significant observation:

> [D]uring the last 40 years in which the pretrial processes have been enormously expanded, it has never occurred to anyone, so far as I am aware, that a pretrial deposition or pretrial interrogatories *were other than wholly private to the litigants.* A pretrial deposition does not become part of a "trial" until and unless the contents of the deposition are offered in evidence. . . . In the entire pretrial period, there is no certainty that a trial will take place.

(Italics ours.) *Gannett*, at 396–97.

Nevertheless, within the last few years, there has appeared a line of cases which hold that a protective order forbidding publication of discovery material cannot be entered if the material is of sufficient newsworthiness, unless the court finds that (1) the harm posed by dissemination is substantial and serious, (2) the restraining order is narrowly drawn and precise, and (3) there is no alternative means of avoiding the harm which intrudes less directly on expression.

In re Halkin, 598 F.2d 176 (D.C. Cir. 1979) is the leading case espousing this doctrine. The defendant in *Halkin* was

the United States government, sued by the plaintiffs for invasion of their constitutional rights through unlawful surveillance, occasioned by their opposition to the war in Vietnam. There was no question but that the matters revealed were of public importance, as well as public interest. Here there is no indication that the Aquarian Foundation's activities enjoy a comparable distinction. Nor is the government a party. These facts are sufficient to distinguish *Halkin*. Moreover, we are not convinced that the *Halkin* approach properly serves the administration of justice. As the 2-judge majority did in *Halkin*, we look to the United States Supreme Court for guidance. We are led, however, to a different conclusion.

Why are protective orders needed? There has never been any question but that the individual's interest in commercially valuable information, such as "trade secrets", deserves protection. But the language of CR 26(c) makes it clear that interests other than financial warrant protection under the rule. Protective orders may be entered to prevent "annoyance, embarrassment, oppression, or undue burden or expense".

Implicit in this language is a recognition that by requiring a party to submit to the searching inquiries of discovery, the courts have required him to give information about himself which he would otherwise have no obligation to disclose. A realm of privacy which courts had previously left undisturbed was now opened. True, as to all information derived through these proceedings and admitted at trial, a party's interest in privacy must be sacrificed to the needs of adjudication. But as to other information which he is forced to give under the liberal rules of discovery, the effective administration of justice does not require dissemination beyond that which is needed for litigation of the case. It was the needs of litigation and only those needs for which the courts adopted this rule and demanded of the litigant a duty which would not otherwise be his. For this reason, it is proper that the courts be slow to subject a civil litigant to any exposure which he deems offensive, beyond

that which serves the purpose of the rule.

Rights of privacy are established in tort law. *See* Restatement (Second) of Torts §§ 652–652I (1977); *Mark v. Seattle Times*, 96 Wn.2d 473, 635 P.2d 1081 (1981). A tort action should not and does not constitute the sole protection which government affords to the privacy interest of individuals. A threatened invasion of those interests may not have all of the characteristics necessary to warrant recovery of damages under existent tort principles and yet be properly a subject of governmental sanction. Numerous statutes of this state provide examples of such intervention.

These include RCW 43.07.100 (information regarding personal affairs furnished to the Bureau of Statistics); RCW 26.26.050 (records of artificial insemination); RCW 71.05.390 (information regarding the mentally ill); RCW 7.68.140 (information regarding records of crime victims). Other statutes protecting confidentiality include RCW 10.29.030(3), RCW 15.65.510, RCW 18.20.120, RCW 18.46-.090, RCW 18.72.265, RCW 19.16.245, RCW 24.03.435, RCW 24.06.480, RCW 42.17.310 (the public disclosure initiative lists 11 categories of exempt records, including those containing personal information regarding students, patients, clients, prisoners, probationers, parolees, and information regarding employees, appointees or elected officials, "to the extent that disclosure would violate their right to privacy"), RCW 43.21F.060, RCW 43.22.290, RCW 43.43.856, RCW 43.105.041, RCW 48.13.220, RCW 49.17-.200, and RCW 78.52.260.

Federal statutes forbid disclosure except for limited purposes of census information (Census Act, 13 U.S.C. §§ 8, 9, 214 (1954)), data concerning personal lives and business affairs given for purposes of tax collection (Internal Revenue Code, 26 U.S.C. § 6103 (1964)), and disclosure by a federal officer of a wide range of confidential information concerning the operation of businesses (18 U.S.C. § 1905 (1948)).[3]

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[3]*See* Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean*

The "prior restraint" involved in a protective order issued in discovery proceedings is no different in substance from that which is imposed by these statutes. Each protects the confidentiality of information extracted through governmental processes. It is obviously the legislative purpose in enacting these protective statutes, as it was of the Congress and the courts in adopting the discovery rules, to both protect the individual's right of privacy and secure his willing and honest response to the questions asked. In each instance, it is deemed necessary to give the protection in order to achieve the government's objective, whether that be the facilitation of the truth seeking objective in litigation, the imposing of an income tax, care and treatment of the mentally ill, the promulgation of regulations affecting an industry, or other legitimate governmental goal.

We think it safe to say that because of their encroachment upon First Amendment rights of speech and press, if provisions such as these cannot be sustained, the result surely will be a serious undermining of the morale of the people as well as the integrity of government. Provisions such as these, like CR 26(c), express strong governmental policy, designed to protect valuable rights of private individuals as well as to further legitimate interests of the state.

Prosser, 39 N.Y.U. L. Rev. 962 (1964). Professor Bloustein, noting the "increasing accumulation of information about each of us which finds its way into government records and files", said:

> Most of us have agreed . . . that the social benefits to be gained in these instances require the information to be given and that the ends to be achieved are worth the price of diminished privacy.
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> But this tacit agreement is founded upon an assumption that information given for one purpose will not be used for another. We are prepared to tell the tax collector and the census taker what they need to know, but we are not prepared to have them make a public disclosure of what they have learned. The intrusion is tolerable only if public disclosure of the fruits of the intrusion is forbidden. This explains why many of the statutes which require us to tell something about ourselves to a government agency contain an express provision against disclosure of such information. It also explains why there are general provisions prohibiting disclosure of information of a personal nature gained in an official capacity.

(Footnotes omitted.) Bloustein, *supra* at 999.

The court's endeavor should be to uphold such measures if possible, if it can be done without unduly invading some other protected right. A persuasive argument can be made that when persons are required to give information which they would otherwise be entitled to keep to themselves, in order to secure a government benefit or perform an obligation to that government, those receiving that information waive the right to use it for any purpose except those which are authorized by the agency of government which exacted the information.[4] However, because the United States Supreme Court has been reluctant to find waiver in First Amendment cases, we do not pursue that theory but confine ourselves to the question whether the "heavy burden" of justifying the restraint has been sustained in the circumstances of this case.

It is not alone in the area of tort law or statutory enactment that rights of privacy have been acknowledged. The United States Supreme Court both in majority and minority opinions has exhibited increasing awareness and appreciation of these important adjuncts to freedom.

Justice Brandeis, dissenting in *Olmstead v. United*

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[4]The Supreme Court has said that waivers of First Amendment rights are to be inferred only in "clear and compelling" circumstances. *Curtis Pub'g Co. v. Butts*, 388 U.S. 130, 145, 18 L. Ed. 2d 1094, 87 S. Ct. 1975 (1967). Also in *Perry v. Sindermann*, 408 U.S. 593, 33 L. Ed. 2d 570, 92 S. Ct. 2694 (1972), the Court found that denial of tenure to a teacher had been caused by his advocacy of positions contrary to those of his employers and held that a benefit such as employment could not be conditioned on a waiver of constitutional rights.

We find it difficult to conceive of circumstances more "clear and compelling" than those involved here. Parties seeking to utilize the processes of discovery necessarily acquaint themselves with the rules which attend that process. They know the purposes for which discovery is intended, and that protective orders can be entered in the discretion of the court. Attorneys are surely aware that it is improper to exploit the fruits of discovery by using them for other than authorized purposes. It is true that no penalty can attach for such use if a protective order is not obtained; but it is understood in the majority of cases that confidentiality will be respected, thus removing the necessity of seeking such an order to protect against unwanted publicity.

In the case of governmental employees and officials, it is also presumably made clear to them upon assuming their duties that information obtained in the course of their duties from private persons is to be kept confidential.

States, 277 U.S. 438, 478, 72 L. Ed. 944, 48 S. Ct. 564, 66 A.L.R. 376 (1928), said:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . . They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

In *Time, Inc. v. Hill*, 385 U.S. 374, 17 L. Ed. 2d 456, 87 S. Ct. 534 (1967), Justice Fortas (joined by the Chief Justice and Justice Clark), dissenting, said:

> There are great and important values in our society, none of which is greater than those reflected in the First Amendment, but which are also fundamental and entitled to this Court's careful respect and protection. Among these is the right to privacy, which has been eloquently extolled by scholars and members of this Court. . . . It is, simply stated, the right to be let alone; to live one's life as one chooses, free from assault, intrusion or invasion except as they can be justified by the clear needs of community living under a government of law. As Mr. Justice Brandeis said in his famous dissent in *Olmstead v. United States*, 277 U. S. 438, 478 (1928), the right of privacy is "the most comprehensive of rights and the right most valued by civilized men."
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> . . . As stated in the concurring opinion of Mr. Justice Goldberg, with whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN joined: "the right of privacy is a fundamental personal right, emanating 'from the totality of the constitutional scheme under which we live.'" [*Griswold v. Connecticut*, 381 U.S. 479, 494 (1965)].

(Footnotes omitted.) *Time, Inc.*, at 412–14.

Time, Inc. was a case in which the plaintiffs sought damages for invasion of their privacy through publication of a story falsely declaring that they had been involved in an encounter with convicts similar to the one then being portrayed in a stage play in New York. The Court held that Times, Inc., could be held liable only if the story was

printed recklessly or with knowledge of its falsity.

Since the decisions in that case and *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 29 L. Ed. 2d 296, 91 S. Ct. 1811 (1971) (extending the rule of *New York Times Co. v. Sullivan*, 376 U.S. 254, 11 L. Ed. 2d 686, 84 S. Ct. 710, 95 A.L.R.2d 1412 (1964) to matters of general or "public interest" as well as public officials and public figures), the high Court has begun to take a more sympathetic view of the rights of persons who are the victims of publicity. *See Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 53 L. Ed. 2d 965, 97 S. Ct. 2849 (1977) (a television station owner may not appropriate an individual's entertainment act); and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 41 L. Ed. 2d 789, 94 S. Ct. 2997 (1974) (an attorney, even though he has gained a reputation in the community, is a private individual and does not have to meet the *New York Times* standards of proof in pursuing a libel action). In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 488, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975), the Court took note of the fact that there is, in this century, "a strong tide running in favor of the so-called right of privacy" and said that powerful arguments can be made that there is a zone of privacy surrounding every individual, a zone within which the state may protect him from intrusion by the press, with all its attendant publicity. There, a damage action was brought, relying upon a Georgia statute which made it a misdemeanor to broadcast a rape victim's name. The Court upheld the broadcasting company's right to announce the name in that case, because it appeared in the records of the court, which were open to the public. It said that the state may not impose sanctions on the publication of truthful information contained in official court records open to public inspection. However, the Court did not suggest that all judicial proceedings are necessarily public. On the contrary, it said:

> If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private

information. Their political institutions must weigh the interests in privacy with the interests of the public to know and of the press to publish.

(Footnote omitted.) *Cox Broadcasting Corp.*, at 496.

In a footnote, the Court said that it was not implying anything about constitutional questions which might arise from a state policy not allowing access by the public and press to various kinds of official records, such as records of juvenile court proceedings.

These two statements taken together strongly suggest that the Court was aware of the overriding necessity for the protection of privacy interests in certain governmental contexts—such as those involved in discovery proceedings and the various situations covered by the statutes we have cited earlier.

The Supreme Court has recognized privacy claims in *Carey v. Population Servs. Int'l*, 431 U.S. 678, 52 L. Ed. 2d 675, 97 S. Ct. 2010 (1976); *Planned Parenthood v. Danforth*, 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976); and *Roe v. Wade*, 410 U.S. 113, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973). And in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 (1958), the Court gave strength to the individual's freedom of association, which is one of the attributes of the interest in privacy. There an attempt on the part of the State to require the NAACP to disclose its membership lists was rebuffed. The Court said: "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association". *NAACP*, at 462.

Thus we have seen that the courts, in promulgating the rules of discovery, were aware that by allowing liberal discovery, with inquiries into matters which would not necessarily be introduced or admissible at trial, they were permitting invasions of a litigant's private domain and were rightly concerned that he should be protected against abuse of the discovery process.

Protection against use of materials for publicity purposes

has most frequently been achieved by limiting the parties in attendance at a deposition and ordering the deposition sealed until further order of the court. 4 J. Moore, *Federal Practice* ¶ 26.74 (2d ed. 1982).

Cases involving a claim of constitutional right to publicize the results of discovery appear to be recent phenomena.

Among those courts which have been called upon to consider the proposition, we have been surprised to find some which have summarily held that the right to publish is paramount, without giving any attention to the needs of judicial administration, or the interests of litigants. These include *Georgia Gazette Pub'g Co. v. Ramsey*, 248 Ga. 528, 284 S.E.2d 386 (1981), reversing a thoughtful opinion of the superior court judge. That judge did not reject *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979), but found all of its requirements satisfied, essentially upon the basic principle that giving publicity to discovery materials does not serve the fair administration of justice. The judge pointed out that a protective order would help ensure a fair trial in the civil case and in any possible criminal proceedings which might be brought against the plaintiff.[5]

The Georgia Superior Court also took notice of the plaintiff's privacy interests and the exploitation which was within the power of the defendant as a publisher of newspapers.

Unfortunately, the Supreme Court of Georgia paid no heed to these considerations, but held without discussion that the provision of the state constitution guaranteeing freedom of the press was decisive of the issue. Inasmuch as the court ignored the objectives and needs of judicial administration, as served by the discovery rules or the interests of litigants, we do not find that opinion persuasive.

In contrast is the approach of Mr. Justice Rehnquist,

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[5]This was an action for invasion of privacy based on a story about the plaintiff, a dentist, as a prime suspect in the investigation of a crime.

concurring in *Smith v. Daily Mail Pub'g Co.*, 443 U.S. 97, 61 L. Ed. 2d 399, 99 S. Ct. 2667 (1979). He cited *American Communications Ass'n v. Douds*, 339 U.S. 382, 394, 94 L. Ed. 925, 70 S. Ct. 674 (1950), where the Court had said: "Freedom of speech . . . does not comprehend the right to speak on any subject at any time", and also quoted from *Branzburg v. Hayes*, 408 U.S. 665, 683, 33 L. Ed. 2d 626, 92 S. Ct. 2646 (1972), "the press is not free to publish with impunity everything and anything it desires to publish." Rehnquist said that conflicting interests must be weighed. He would make it clear that the protection of a juvenile's reputation is a state interest of the highest order, but agreed with the result reached in *Smith* because the statute did not achieve its objective.

In *New York Press v. McGraw-Hill*, 4 Media L. Rep. 1819 (N.Y. App. Div. 1978), the appellate division of the New York Supreme Court, in a business defamation action against a publisher, held that the absence of a showing that the defendant's use of material and information obtained during discovery would seriously harm the plaintiff, or to show that such material was confidential, justified the New York Supreme Court (trial court) in refusing to grant a requested protective order. That court was of the opinion that the news media, even when a party to the action, had a right to gather news at a discovery proceeding and publish it, and that the right should not be interfered with except under the most extreme circumstances. We do not share that view.

The Florida Circuit Court for the Seventeenth Judicial Circuit, Broward County, denied a motion to exclude the press and public from discovery proceedings in *Johnson v. Broward Cy.*, 7 Media L. Rep. 2125 (Fla. Cir. Ct. 1981). It appears from the opinion that under Florida law depositions are generally open to the public. That is not the case in this state.

Reliance Ins. Co. v. Barron's, 428 F. Supp. 200 (S.D.N.Y. 1977) was a damage action brought by an insurance company against a well known financial magazine and one of its

contributors, a professor of accountancy. Before discovery began, the plaintiff asked for what the district judge termed "the customary pre-trial stipulation and order of confidentiality, limiting pre-trial use of such material to matters pertaining to this action." *Barron's*, at 202. The plaintiff specifically asked that no other uses be made of nonpublic information obtained pursuant to the discovery proceedings. The defendants declined to so stipulate and the court refused to enter a protective order, finding first that the plaintiff had failed to show that it "[would] indeed be harmed by disclosure." *Barron's*, at 204, quoting from *Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405, 409 (N.D.N.Y. 1973). But the court said that it would be inclined to issue the order if the defendants were not members of the press. It held that to restrain them from publishing information gained through discovery proceedings would constitute a "prior restraint", and that to justify such an order the plaintiff was required to demonstrate that the material to be restrained was, indeed, confidential and that its publication would cause plaintiff to suffer serious and irreparable injury.

For this proposition, the court cited only *New York Times Co. v. United States*, 403 U.S. 713, 29 L. Ed. 2d 822, 91 S. Ct. 2140 (1971), and that not as direct authority but as a comparable case. However, *New York Times* had nothing to do with the discovery process. It was an injunction suit brought by the United States against a newspaper to restrain publication of materials concerning government policy, which were, of course, of great interest to the public.

The district court in *Barron's* assumed that members of the media, when in court, have rights superior to those of other parties. This, as we have observed, is not a valid assumption.

In *Koster v. Chase Manhattan Bank*, 8 Media L. Rep. 1155 (S.D.N.Y. 1982), the United States District Court for the Southern District of New York wrote a scholarly opinion reviewing the history and nature of the discovery process in the courts, their holdings with respect to the limited

First Amendment interest that litigants have in disseminating information learned through discovery, and the conflicting views which courts have expressed as to the standards to be used in evaluating protective orders restricting dissemination. The court took cognizance of the fact that the nature of discovery makes it unfair to allow the recipient of discovery materials an unlimited right to disseminate those materials. It indicated approval of the views of Wilkey, J., dissenting in *In re Halkin, supra,* who said that a litigant accepts the materials produced through discovery subject to the possibility that the court may restrict their use.

The court in *Koster* also noted the developing controversy regarding the standard which should be used to test the validity of a protective order. But having made all of these observations it avoided adoption of any standard by holding that, under the most lenient, the defendants had not shown good cause to issue a protective order. This opinion illustrates the difficulties which the trial courts create for themselves when they attempt to enunciate restrictive criteria for the exercise of their discretion.

At least two federal courts have made that attempt, the District of Columbia Court of Appeals in *In re Halkin, supra,* and the First Circuit Court of Appeals in *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981).

The 2-judge majority in *Halkin,* while not willing to go so far as to declare a protective order to be a "prior restraint" on freedom of expression, as that term is generally understood, found that it did involve "First Amendment interests". *Halkin,* at 191. In that case the subject matter of the discovery process constituted material of considerable legitimate interest to the public.

The protective order concerned certain documents relating to government surveillance of opponents of the war in Vietnam and other political activities. The documents had been purged of all sensitive matters before being handed over to the plaintiffs pursuant to discovery requests. No protective orders were sought until after the documents

were in the hands of the plaintiffs and they proposed to release some of the documents to the press. The government claimed that public disclosure of these documents would be "'prejudicial to the defendants' right to adjudication of the issues in this civil action in an uncolored and unbiased climate, including a fair trial.'" *Halkin*, at 181–82. The trial court issued the order, apparently considering it routine.

The Court of Appeals, noting that the case would be tried to the court rather than to a jury, found these allegations inadequate to support the order.

In *Halkin* there were no rights of privacy to be protected by the order. The Court of Appeals, not content to merely hold that the court had abused its discretion under the circumstances of the case, devised a set of standards which could hardly be more onerous, had the court found the "prior restraint" doctrine applicable.[6]

The parties objecting to a protective order in *San Juan Star* were not litigants but rather were members of the media who desired to obtain information from attorneys who were subject to such an order. The First Circuit Court of Appeals gave much more weight than did the *Halkin* court to the litigant's right to privacy and to the effect of publicity upon the proper functioning of the discovery process. Nevertheless, the court, rather than permit the lower

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[6]The court said:

"Initially, the trial court must determine whether a particular protective order in fact restrains expression and the nature of that restraint. First Amendment interests will vary according to the type of expression subject to the order. An order restraining publication of official court records open to the public, or an order restraining political speech, implicates different interests than an order restraining commercial information. The interests will also vary according to the timeliness of the expression. An order restraining highly newsworthy information raises a different issue than a temporary restraint of materials having 'constant but rarely topical interest.'

"The court must then evaluate such a restriction on three criteria: the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn and precise; and there must be no alternative means of protecting the public interest which intrudes less directly on expression." (Footnotes omitted.) *In re Halkin*, 598 F.2d 176, 191 (D.C. Cir. 1979).

courts to continue to function under the rule as it is presently worded, conceived a set of criteria for determining whether a protective order should issue. These criteria were somewhat less stringent than those adopted in *Halkin*, but would nevertheless impose an added burden upon the trial court in determining whether to issue the protective order. The court characterized its standard as one "of 'good cause' that incorporates a 'heightened sensitivity' to the First Amendment concerns at stake". *San Juan Star*, at 116.

In our view, the procedures adopted by these courts for the promulgation of protective orders and the criteria for review of those orders are unduly complex and onerous and tend to undermine the objectives of pretrial discovery, which is designed to expedite rather than to hinder the progress of litigation. We do not find them mandated in the decisions of the United States Supreme Court which bear upon this subject.

We observe that the Supreme Court, in cases where it has been called upon to examine the reach of First Amendment protections, has generally taken cognizance of the function which publicity serves in the particular circumstances. For example, in *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931), cited in *Halkin*, a newspaper, which was found objectionable because of the scandalous charges which it contained within its covers, had been abated. The Court, reversing, stressed the fact that the published charges were made against public officials, that for 150 years there had been almost an entire absence of attempts to restrain publications relating to malfeasance of public officers, indicating a deep-seated conviction that such restraints would violate constitutional rights, and that the growing complexity of society and the prevalence of organized crime in large cities made a vigilant press all the more necessary.

In *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 29 L. Ed. 2d 1, 91 S. Ct. 1575 (1971), the Court reversed an injunction directed against the distribution of leaflets (evidently racist in their content).

These cases are concerned with rights of advocacy, and the dissemination of ideas, which lie at the core of First Amendment protection. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 56 L. Ed. 2d 1, 98 S. Ct. 1535 (1978). There is no advocacy or abstract discussion involved here—only the reporting of supposed facts elicited in discovery.

The rationale of *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–92, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975) is significant here:

> [I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice. See *Sheppard* v. *Maxwell*, 384 U. S. 333, 350 (1966).[7]

In answer to the respondent's contention that the efforts

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[7] *Cf. Gannett Co. v. DePasquale*, 443 U.S. 368, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (1979) where it was held that the United States Constitution does not give the public an affirmative right of access to a pretrial hearing, if all the participants agree that it should be closed to protect the fair trial rights of the defendant. The Court said that publicity concerning pretrial suppression hearings poses special risks of unfairness because it may influence public opinion against a defendant and inform potential jurors of inculpatory information wholly inadmissible at the actual trial.

The Court also said that the adversary system of criminal justice is premised upon the proposition that the public interest is fully protected by the participants in the litigation. It said that at common law pretrial proceedings, because of the concern for a fair trial, were never characterized by the same degree of openness as were actual trials.

of the press had infringed his right to privacy by broadcasting to the world the fact that his daughter was a rape victim, the Court said that the commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions thereof are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government.

In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 65 L. Ed. 2d 973, 100 S. Ct. 2814 (1980), a case in which the Court upheld the right of the press to attend criminal trials, Justice Brennan pointed out principles which are relevant in weighing the interest of the media in access to governmental proceedings. He said:

> An assertion of the prerogative to gather information must . . . be assayed by considering the information sought and the opposing interests invaded.
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> . . . [T]he case for a right of access has special force when drawn from an enduring and vital tradition of public entree to particular proceedings or information. Cf. *In re Winship*, 397 U. S. 358, 361–362 (1970). Such a tradition commands respect in part because the Constitution carries the gloss of history. More importantly, a tradition of accessibility implies the favorable judgment of experience. Second, the value of access must be measured in specifics. Analysis is not advanced by rhetorical statements that all information bears upon public issues; what is crucial in individual cases is whether access to a particular government process is *important in terms of that very process*.

(Footnote omitted. Italics ours.) *Richmond Newspapers*, at 588–89.

Thus, it is evident that the Court's concern for the protection of First Amendment rights, at least insofar as access to governmental processes is concerned, increases in proportion to the intensity of the legitimate interest which the public has in learning about those processes. The conduct of public officials and the proceedings at trial are of vital concern to the people, the one because of their interest in the public functions which these officials perform and in

their integrity, ability and diligence, and the other additionally, because of their interest in seeing that constitutional rights are protected and justice done. The need for information upon these matters is engendered by the rights and responsibilities the citizen has in choosing those who will govern him and administer justice and in pursuing the changes in law which will correct the inadequacies which he may find in the functioning of his government.

A case which is of particular significance here is *Landmark Communications, Inc. v. Virginia, supra.* There, a statute made it a crime to divulge information regarding proceedings before a state judicial review commission. For printing in its newspaper an article accurately reporting on a pending inquiry by the commission and identifying the judge whose conduct was being investigated, the appellant publisher was convicted of violating the statute.

The Court held that the First Amendment does not permit the *criminal punishment of third persons who are strangers* to proceedings before such a commission, for publishing or divulging truthful information regarding confidential proceedings of the commission.

No reporter, employee, or representative of Landmark had been subpoenaed by or had appeared before the commission in connection with the proceedings described in the article.

In reaching its conclusion that the conviction violated the defendant's First Amendment rights, the Court took care to note that the case did not involve a constitutional challenge to the State's power to keep the commission's proceedings confidential or to punish participants.

The Court cited *Mills v. Alabama*, 384 U.S. 214, 16 L. Ed. 2d 484, 86 S. Ct. 1434 (1966) where it had said that, whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that amendment was to protect the free discussion of governmental affairs. The operations of courts and the judicial conduct of judges are matters of utmost public concern.

It quoted from *Sheppard v. Maxwell*, 384 U.S. 333, 350, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (1966):

> A responsible press has always been regarded as the handmaiden of effective judicial administration . . . Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

It found that the operation of the judicial inquiry commission was a matter of public interest, necessarily engaging the attention of the news media. The article published provided accurate factual information about a legislatively authorized inquiry pending before the commission, and in so doing clearly served those interests in public scrutiny and discussion of governmental affairs which the First Amendment was adopted to protect.

Recognizing that the confidentiality of the proceedings served legitimate state interests, the Court nevertheless found those interests insufficient to justify criminal sanctions for publication, *when imposed upon nonparticipants*. It noted that a number of states punished breaches of confidentiality by participants through contempt proceedings, and that more than 40 states having similar provisions did not find it necessary to provide criminal sanctions.

It observed that protection of the reputation of judges and the judicial system was not a sufficient ground for the sanction—judges and the court system are no more immune from scrutiny and criticism than other public officials.

Finally, the Court in *Landmark Communications, Inc. v. Virginia, supra* at page 845, said that much of the danger to the administration of justice posed by publicity could be eliminated through "careful internal procedures to protect the confidentiality of Commission proceedings."

We find implicit in this opinion a recognition that there are governmental proceedings which legitimately may be closed to the public and the press, and the State may pun-

ish those participating in such proceedings if they disobey an order to keep them confidential. *See also Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21, 68 L. Ed. 2d 693, 101 S. Ct. 2193 (1981), where the Court said:

> In the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors. Our decision regarding the need for careful analysis of the particular circumstances is limited to the situation before us—involving a broad restraint on communication with class members [in a Civil Rights Act class action, 42 U.S.C. 2000 *et seq.*]. We also note that the rules of ethics properly impose restraints on some forms of expression. See, *e. g.*, ABA Code of Professional Responsibility, DR 7–104 (1980).

We have seen that in *Gannett v. DePasquale*, 443 U.S. 368, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (1979), it was held that, in order to protect the right of a defendant to a fair trial, the court may close a preliminary hearing to the public and the press. We find implicit in that holding a recognition that when a hearing is closed, the court may properly restrict the use which participants in the hearing may make of information gained in that proceeding, forbidding its disclosure to members of the public, including the media. That being the case, there is no sound reason why the same restrictions may not be imposed in discovery proceedings.

To begin with, the public generally does not have the same interest in the conduct of civil actions that it has in criminal actions, for the public is a party to a criminal action, the plaintiff being the state or other governmental body. Also, the functioning of the adversary system plays an important role in avoiding abuses in civil proceedings. With respect to discovery proceedings, the strong governmental interest in effectuating the purposes of those proceedings makes it imperative that their integrity be preserved. Essential to that integrity is the protection of the party against whom discovery is sought from unnecessary "annoyance, embarrassment, oppression, or undue burden or expense". CR 26(c). Such protection must

include protection of a party's privacy interest in avoiding unwanted publicity. This objective serves not only the State's interest in protecting its citizens in their legitimate expectations of privacy, but also, and perhaps more importantly, the State's vital interest in seeing that justice is administered upon all of the relevant facts, freely and truthfully disclosed by the parties.

Inherent in CR 26(c), providing for protective orders, is a recognition that parties generally are not eager to divulge information about their private affairs and, that when called upon to do so in a lawsuit, will be even more reluctant if they are not assured that the information which they give will be used only for the legitimate purposes of litigation. Many will be tempted to withhold information and even to shade the truth, where otherwise they would not do so. And, as the trial court rightly observed, rather than expose themselves to unwanted publicity, individuals may well forego the pursuit of their just claims. The judicial system will thus have made the utilization of its remedies so onerous that the people will be reluctant or unwilling to use it, resulting in frustration of a right as valuable as that of speech itself.

It is perhaps a matter of speculation as to what the effect will be in any given case. However, that which concerns us is the cloud which will be cast upon the integrity of the discovery process if the courts permit such intrusions.

As compared with the interests served by the rule, the interest of the public in knowing what information is given in such proceedings is, in the ordinary case, minimal. Of course, there are cases which involve matters which do concern the public generally (antitrust litigation being an example), and where privacy interests are not involved, there may be good reason to deny a protective order. In such cases, the tendency to undermine confidence in the integrity of the process may be negligible, and the objecting party may have difficulty in showing good cause, as was the case in *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979).

It does not seem likely that, where a matter is considered

newsworthy, the media will be without its own means of investigating the facts. In the present case, it is evident from the record that the defendants had obtained access to a sufficient amount of information about the plaintiff and his organization to produce a vivid series of accounts about their activities.

We are not told what interest of the public is served by the newspaper's further exposure of this allegedly religious sect,[8] unorthodox though it undoubtedly is, but we assume that publishers could rightly find it newsworthy. It may have some significance with respect to governmental activity, but, if so, that fact has not been brought to light. If the plaintiff and his associates are engaged in unlawful activities, it is safe to assume what with the exposure that has already been made, the appropriate law enforcement agencies will take action. In view of the fact that the discovery rules have a long history of functioning without exposure of litigants to unwanted publicity and at the same time the news media has flourished, giving extensive coverage to the bizarre and the unorthodox, we do not perceive that continued protection of the discovery proceedings will constitute a substantial impediment to news gathering in this area.

As the Supreme Court has more than once remarked, the function of the media in serving not only the public's need to know but the integrity of governmental functions themselves is of great importance in balancing First Amendment rights against other interests of the state. Here, there is nothing to indicate that publicity given to the evidence furnished by a party in a pretrial proceeding will in any way tend to promote the proper functioning of such proceedings. There is involved here no evaluation or criticism of judges or other officials administering the system nor of

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[8] "A religious claim, to merit protection under the free exercise clause of the First Amendment, must satisfy two basic criteria. First, the claimant's proffered belief must be sincerely held; . . . [and] the claim must be rooted in religious belief, not in 'purely secular' philosophical concerns." (Footnote omitted.) *See Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981).

the system itself, but only a proposal to exploit the fruits of that system. Thus, this vital consideration which has sometimes led the courts to favor the interests of speech and press over the rights of a defendant in a criminal trial are entirely absent.

Assuming then that a protective order may fall, ostensibly, at least, within the definition of a "prior restraint of free expression", we are convinced that the interest of the judiciary in the integrity of its discovery processes is sufficient to meet the "heavy burden" of justification. The need to preserve that integrity is adequate to sustain a rule like CR 26(c) which authorizes a trial court to protect the confidentiality of information given for purposes of litigation.

The rule itself imposes no affirmative obligation upon a participant to refrain from giving publicity to information derived in a discovery proceeding. However, as Chief Justice Burger has remarked, it has customarily been taken for granted that such information is given solely for purposes of litigation. It is evident that the rule contemplates that participants will not abuse the process, but if they do attempt or propose to do so, the party against whom such action is directed may apply for protection. Our understanding of the rule, contrary to that of the federal circuit courts in *In re Halkin, supra*, and *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981), is that "good cause" is established if the moving party shows that any of the harms spoken of in the rule is threatened and can be avoided without impeding the discovery process. In determining whether a protective order is needed and appropriate, the court properly weighs the respective interests of the parties. The judge's major concern should be the facilitation of the discovery process and the protection of the integrity of that process, which necessarily involves consideration of the privacy interest of the parties and, in the ordinary case at least, does not require or condone publicity.

Here, there is no question but that the defendants were threatening to publicize the information which they gained

through the discovery process. They insist upon their right to do so. The information to be discovered concerned the financial affairs of the plaintiff Rhinehart and his organization, in which he and his associates had a recognizable privacy interest; and the giving of publicity to these matters would allegedly and understandably result in annoyance, embarrassment and even oppression.

Of course, by undertaking the lawsuit the plaintiff necessarily consented to the exposure of all relevant evidence admissible and admitted at trial, which will then be a matter of public record and available for publication by the defendants or any other person. But until and unless the fruits of the discovery are made public through the judicial process (or by the plaintiffs or others independently of discovery),[9] plaintiffs are entitled to the protection of the court.

We find no abuse of discretion and affirm the issuance of the protective order.

[2] Turning to the plaintiffs' cross appeal, the major contention is that requiring disclosure of membership lists, donors and benefactors violates the rights of privacy and the associational rights of these persons. As should be clear from our previous discussion, certain invasions of those rights are necessary to enable the courts to render a just decision upon the relevant facts. The protective order shields the plaintiffs from abuse of the discovery privilege. The more extensive protection which they desire is within the discretion of the trial court in a proper case; but the plaintiffs are not entitled to such an order as a matter of right. There is no showing that the protective order is inadequate to prevent any abuse threatened by the defendants.

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[9] The defendants express some concern that the protective order is too broad in that it does not make it clear that the defendants may publish the information if it is revealed in open court or otherwise made public by the plaintiffs. This may be an unnecessarily strict construction of the order; but to remove any doubt, the defendants should apply to the court to clarify the order, consistent with this opinion.

The plaintiffs, as the defendants point out, are attempting to assert a privilege to withhold evidence in a private suit where they seek damages based upon the allegedly privileged information. We have reviewed the cases cited in their brief and find none which supports the theory in the circumstances of this case. All of the evidence covered by the order compelling disclosure was relevant to the plaintiffs' claims and the defense of those claims, and their legitimate interests in privacy and association were protected by the court's order insofar as was possible without denying the defendants the right to develop their defenses.

With respect to this order, also, we find no abuse of discretion.

The orders are affirmed.

BRACHTENBACH, C.J., and STAFFORD, WILLIAMS, and DORE, JJ., concur.

DOLLIVER, J. (concurring)—Although I agree with the result reached by the majority, I believe the court should state categorically that discovery under the standards of CR 26(c) and the protective orders of the court in this case do not require a First Amendment analysis. The United States Supreme Court has wisely avoided the morass of rather tendentious First Amendment commentary which has afflicted some of the federal courts in recent cases. *E.g.*, *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979). We should do the same. I agree with the comment of the majority that "we are not convinced that the *Halkin* approach properly serves the administration of justice." Majority opinion, at 236. To this I would add it also does little to advance the cause of First Amendment protections. *See International Prods. Corp. v. Koons*, 325 F.2d 403 (2d Cir. 1963).

In his dissent to *In re Halkin*, Judge Wilkey states with great clarity why a protective order such as in this case is not an assault on the Bill of Rights:

> Within the framework of the discovery laws, then, it is clear that whatever rights a party may have in the mate-

rials that it has exacted from another party in discovery are qualified by conditions properly imposed by the court in its discretion under Rule 26(c). There is no "waiver" of First Amendment rights, as the majority tries to term it; it is simply that when a party uses the court's process in a manner which may be unfair to the other party and is unrelated to the litigation purpose of discovery, the court has the power and responsibility to take whatever action is necessary to protect its process from abuse, and a protective order requiring a litigant to use the products of discovery in a manner consistent with the purposes of discovery is a permissible "prior restraint" if it meets the standards set forth in Rule 26(c).

The majority argues that revelation of governmental action which sometimes accompanies civil litigation should not be kept from the public. Of course, this material on which petitioners wish to hold a press conference now *will* be made public—at the trial. Even matter which has been discovered, but which may not be deemed relevant to issues at trial, can later be fully disclosed and discussed, as I understand the purpose and tenor of the trial court's order. No suppression of free speech is involved in this case; what is at issue is the orderly control of the judicial process by the trial judge.

This is illustrated by the striking anomaly in the majority opinion's logic which the majority does not adequately explain. It is conceded "that plaintiffs do not have a First Amendment right of access to information not generally available to members of the public. *Pell v. Procunier*, 417 U.S. 817, 834, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974); *Zemel v. Rusk*, 381 U.S. 1, 16–17, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609–10, 98 S.Ct. 1306 [1318], 55 L.Ed.2d 570 (1978)." Federal Rule of Civil Procedure 26(c)(1) allows the district court to prevent discovery altogether, if good cause is shown ("may . . . order . . . that the discovery not be had"). No one argues that such prohibition raises any First Amendment issues or problems, and apparently it is conceded by all that such an order may be based on mere "good cause," and the district court need not meet any more stringent test such as "reasonable likelihood of harm" or "serious and imminent threat," etc., before it can issue such an order. However, the majority holds that when a *less seri-*

ous intrusion of the district court is made, *i. e.*, it attempts to set limits on the use of the information already received, it must meet *more stringent* First Amendment standards.

Thus the anomalous situation results, in which the district court is completely unfettered by First Amendment considerations when it is most intrusive, *i. e.*, prohibits discovery altogether, and is more restricted when it is less intrusive, *i. e.*, puts limits on the use of material which it allows to be discovered. This has nothing to do with any "benefits-privileges" analysis, as the majority interprets my position (note 28). It is simply the principle that the greater (the power to prohibit altogether) includes the lesser (the power to grant with conditions), a bit of logic which has been recognized as valid at least since the ancient Greeks.

It seems to me, then, that the majority's elaborate First Amendment analysis is gratuitous. Since an order properly issued under Rule 26(c) is constitutional, the focus of inquiry should be whether or not "good cause" has been shown for the order under review within the meaning of Rule 26(c). If the district court properly issued the order under Rule 26(c), then the order is consistent with First Amendment safeguards, and there is no reason to embark on an independent First Amendment analysis. If the district court did not properly issue the order under Rule 26(c), then it is violative of statutory standards, and there is again no reason to embark on a First Amendment analysis.

(Footnotes omitted.) *In re Halkin*, 598 F.2d at 208–09.

I concur with the view of Judge Wilkey. Subjecting the discovery process to the strictures of the First Amendment may increase trial courts' reluctance to allow discovery in the first place. Trial judges who fear the impairment of their ability to regulate abuses once the discovery process has started may resort to the more easily justified but more drastic alternative of denying discovery altogether. The analysis represented by the *In re Halkin* majority and by the dissent here neither advances the administration of justice nor guarantees any rights contained in the First

Amendment.

BRACHTENBACH, C.J., and DIMMICK, J., concur with DOLLIVER, J.

UTTER, J. (dissenting)—I must dissent because I cannot agree with the majority's analysis. While purporting to apply the doctrine of prior restraint to this case, the majority's ruling for all practical purposes makes discovery a category exempt from First Amendment scrutiny. I would vacate the existing protective order and remand for reconsideration in light of the guidelines set forth in this opinion. First Amendment interests must be balanced against legitimate concerns for the administration of the discovery process, with the ultimate burden of justification resting with the party seeking the restraint.

The majority opinion expresses doubt as to the applicability of the prior restraint doctrine with respect to discovery protective orders, majority at 231, but nevertheless finds CR 26(c) justified even under the "heavy burden", majority at 239, imposed under the prior restraint doctrine. While voicing adherence to the prior restraint doctrine, the majority's analysis reflects more its initial skepticism as to the doctrine's application. That skepticism is warranted but that does not mean First Amendment interests need not be carefully balanced in issuing protective orders. By failing to apply in earnest the traditionally stringent standards of prior restraint, the majority both dilutes the future value of the doctrine in a proper context and neglects the primary duty of the court in this case: establishing the appropriate standard by which trial courts may issue protective orders without violating the requirements of the constitution.

I

The thrust of the majority's analysis is that the court need not reach the question of whether the prior restraint doctrine applies to protective orders because even under the heavy burden of that doctrine, "the interest of the judiciary in the integrity of its discovery processes is suffi-

cient to meet the 'heavy burden' of justification." Majority at 256. Since, under the majority's analysis, CR 26(c) is justified even under the stringent prior restraint test, protective orders may be justified on a showing of good cause which the majority defines as a showing of any enumerated harm threatened that "can be avoided without impeding the discovery process." Majority at 256. While I agree with the majority that the interests it identifies are important factors to weigh in determining whether a protective order should issue, such interests do not exempt from First Amendment analysis the many situations that arise under the rule. While purporting to hold CR 26(c) is a justified prior restraint, the majority's position is actually tantamount to holding discovery is an excepted category from First Amendment scrutiny—a position unsupported in the law. *Rodgers v. United States Steel Corp.*, 508 F.2d 152, 163 (3d Cir.), *cert. denied*, 420 U.S. 969 (1975); *In re Halkin*, 598 F.2d 176, 186–87 (D.C. Cir. 1979).

Prior restraints are permitted only in the most exceptional cases. *United States v. The Progressive, Inc.*, 467 F. Supp. 990, *reconsideration denied*, 486 F. Supp. 5 (W.D. Wis.), *appeal dismissed*, 610 F.2d 819 (7th Cir. 1979). "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 49 L. Ed. 2d 683, 96 S. Ct. 2791 (1976). The Supreme Court has described the doctrine as "one of the most extraordinary remedies known to our jurisprudence." *Nebraska Press Ass'n v. Stuart*, *supra* at 562. There is a heavy presumption against the constitutionality of prior restraints. To be lawful, the restraint "must fit within one of the narrowly defined exceptions to the prohibition against prior restraints . . ." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559, 43 L. Ed. 2d 448, 95 S. Ct. 1239 (1975).

> [The] publication [sought to be restrained] must inevitably, directly, and immediately cause the occurrence of an event kindred to imperiling the safety of a transport

already at sea . . .

New York Times Co. v. United States, 403 U.S. 713, 726–27, 29 L. Ed. 2d 822, 91 S. Ct. 2140 (1971) (Brennan, J., concurring). Even when the prior restraint is imposed to protect a "vital constitutional guarantee . . . the barriers to prior restraint remain high and the presumption against its use continues intact." *Nebraska Press Ass'n v. Stuart*, *supra* at 570. *See Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418–20, 29 L. Ed. 2d 1, 91 S. Ct. 1575 (1971); *Carroll v. President & Comm'rs*, 393 U.S. 175, 21 L. Ed. 2d 325, 89 S. Ct. 347 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631 (1963); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 625 (1931); *Seattle v. Bittner*, 81 Wn.2d 747, 505 P.2d 126 (1973); *Adams v. Hinkle*, 51 Wn.2d 763, 322 P.2d 844 (1958).

Yet faced with this almost insurmountable hurdle, the majority holds protective orders and the multitude of situations under which they might arise are justified as long as a threatened harm can be shown and the protective order will not impede discovery. Had the majority actually applied the traditional doctrine of prior restraint, neither CR 26(c) nor the protective order in this case would have withstood the constitutional test. Even constitutional concerns for privacy do not rise to the level of overcoming the presumption of unconstitutionality attached to prior restraints. *Organization for a Better Austin v. Keefe*, *supra* at 418–20.

II

The protective order's invalidity under the traditional prior restraint test should not resolve this case. While some First Amendment interest does attach to the dissemination of discovery materials, I feel in this context the heavy burden of the prior restraint doctrine is inappropriate. *But see Reliance Ins. Co. v. Barron's*, 428 F. Supp. 200 (S.D.N.Y. 1977); *Davis v. Romney*, 55 F.R.D. 337 (E.D. Pa. 1972).

As a general proposition, pretrial discovery is public

unless compelling reasons exist for denying the public access to the proceedings. *American Tel. & Tel. Co. v. Grady*, 594 F.2d 594 (7th Cir. 1979); *United States v. IBM Corp.*, 66 F.R.D. 219 (S.D.N.Y. 1974); *Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405 (N.D.N.Y. 1973). An individual is entitled to use the fruits of discovery for lawful purposes unless a protective order issues. *Leonia Amusement Corp. v. Loew's, Inc.*, 18 F.R.D. 503, 508 (S.D.N.Y. 1955). While courts have diverged as to the appropriate constitutional standard, there has been little dispute as to the existence of a First Amendment interest in discovery materials. *In re San Juan Star Co.*, 662 F.2d 108 (1st Cir. 1981); *National Polymer Prods., Inc. v. Borg-Warner Corp.*, 641 F.2d 418 (6th Cir. 1981); *In re Halkin, supra* (majority and dissent concurring on this point); *Koster v. Chase Manhattan Bank*, 8 Media L. Rep. 1155 (S.D.N.Y. 1982); Note, *Protective Orders Prohibiting Dissemination of Discovery Information: The First Amendment and Good Cause*, 1980 Duke L.J. 766 (hereinafter Duke Note); Note, *Rule 26(c) Protective Orders and the First Amendment*, 80 Colum. L. Rev. 1645 (1980) (hereinafter Columbia Note). *But cf. Rodgers v. United States Steel Corp.*, 536 F.2d 1001, 1006 (3d Cir. 1976) (considering such First Amendment interest waived); *International Prods. Corp. v. Koons*, 325 F.2d 403, 407 (2d Cir. 1963) (court entertained no doubt of constitutionality of protective orders, though it did not deny the existence of First Amendment interests).

Nonetheless, I feel there are factors that distinguish the restraint of a protective order from the prior restraints that have traditionally been accorded such a heavy presumption of invalidity. A protective order is a restraint on expression but "[t]he phrase 'prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test." *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441, 1 L. Ed. 2d 1469, 77 S. Ct. 1325 (1957) (Frankfurter, J.). *See generally* Barnett, *The Puzzle of Prior Restraint*, 29 Stan. L. Rev. 539 (1977). Protective orders are unlike classic prior restraints (*e.g.*, administrative licensing schemes) in that they result

from an adversary process and can be limited to specific expression. *In re Halkin*, 598 F.2d at 185 nn.16–17. More importantly, protective orders relate only to material gathered by virtue of the court's processes. As the court in *Koster v. Chase Manhattan Bank*, 8 Media L. Rep. 1155, 1159 (S.D.N.Y. 1982) stated: "[T]he special nature of discovery as a source of information justifies a reduced level of scrutiny." As Judge Wilkey in his dissent to *Halkin* stated, one's interest in disseminating discovery materials is restricted because it is obtained solely by virtue of the court's processes. 598 F.2d at 206. Judge Wilkey concluded that since a court can deny access to discovery altogether without being subject to First Amendment analysis, it is anomalous to make protective orders subject to such First Amendment strictures. Applying the logical construct that the greater includes the lesser, Judge Wilkey concluded the greater power of denying access includes the lesser power of placing restrictions on access, and that both should be subject to the same standard.[10] The notion is plausible, but unfortunately deductive logic is a helpful but not necessarily dispositive aspect of legal analysis. *See* R. Wasserstrom, *The Judicial Decision*, ch. 2 (1961). The greater does not always include the lesser when it is a constitution and not a syllogism we are expounding. While an individual does not have a right to public employment, the government may not place unconstitutional conditions on such employment:

> [the government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.

Perry v. Sindermann, 408 U.S. 593, 597, 33 L. Ed. 2d 570,

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[10] The majority, too, seems persuaded by the same argument. See its discussion of *Gannett Co. v. DePasquale*, 443 U.S. 368, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (1979) at page 253. For the same reasons discussed in text, I find its analysis unpersuasive.

92 S. Ct. 2694 (1972). *See In re San Juan Star Co., supra* at 114; Duke Note at 789-90; Columbia Note at 1647 n.16. Thus, if the court's reason for denying a party access to discovery was to deny the party a First Amendment interest in dissemination of those materials, such denial would be just as invalid as a protective order motivated by similar concerns. Judge Wilkey's affirmation of the highly discretionary good cause standard as a basis for denial of both access and protective orders, while logically plausible, does not follow inevitably from a constitutional analysis.[11]

First Amendment concerns persist even though protective orders should not be subject to a heavy presumption of unconstitutionality. In so concluding, I fall in line with the majority of courts that have considered the question. *See Koster, supra* at 1158-59 (and cases cited therein).[12] Unfortunately, the majority's characterization of the good cause standard for such orders does not reflect a concern for the First Amendment interests that must be weighed. By requiring only a showing of one of CR 26(c)'s enumerated harms and that the discovery process not be impeded, the majority does not even require a trial court to look to the countervailing interests of the party against whom the

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[11]The majority also seems enamored of the idea of waiver in this context, though it is chary of adopting such an approach. See footnote 4. Access to discovery cannot be conditioned on a waiver of constitutional rights, *In re Halkin*, 598 F.2d 176, 190 (D.C. Cir. 1978), nor generally is waiver of constitutional rights implied. *In re Halkin, supra; Brady v. United States*, 397 U.S. 742, 25 L. Ed. 2d 747, 90 S. Ct. 1463 (1970); *Curtis Pub'g Co. v. Butts*, 388 U.S. 130, 142-45, 18 L. Ed. 2d 1094, 87 S. Ct. 1975 (1967). *But see Rodgers v. United States Steel Corp.*, 536 F.2d 1001 (3d Cir. 1976).

[12]The Supreme Court has not addressed this question directly, but its recent decision in *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 68 L. Ed. 2d 693, 101 S. Ct. 2193 (1981) provides a helpful analogy. There the Court struck down a restraining order under Fed. R. Civ. P. 23 as an abuse of discretion, but commented:

> Although we do not decide what standards are mandated by the First Amendment in this kind of case, we do observe that the order involved serious restraints on expression. This fact, at minimum, counsels caution on the part of a district court in drafting such an order, and attention to whether the restraint is justified by a likelihood of serious abuses.

452 U.S. at 103-04. See Section III(C) in the text of the opinion.

protective order is sought.

III

Recently, courts have struggled with devising standards by which trial courts should render protective orders when First Amendment interests are at issue. The cases of *Halkin* and *San Juan Star* are notable. While these courts have not evaluated protective orders "by the stringent standards governing classic prior restraints", *Koster*, 8 Media L. Rep. at 1159, they have required more rigorous standards for reviewing "good cause" determinations than "abuse of discretion".[13]

A

In *Halkin*, the court required "close scrutiny of [the impact of protective orders] on protected First Amendment expression", 598 F.2d at 186, viewing a protective order as a "direct governmental action limiting speech". *Halkin*, at 183. The court set forth a 2-part test of first determining the significance of the First Amendment interests restrained, and second, evaluating the restraint according to three criteria:

> the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn and precise; and there must be no alternative means of protecting the public interest which intrudes less directly on expression.

(Footnotes omitted.) *Halkin*, at 191. This approach requires the balancing of First Amendment interests against the harm avoided by the protective order, and imposes requirements of specificity, narrowness and an exhaustion of less intrusive alternatives.

I agree with the *Halkin* court that a trial court's ability to deny access does not dispose of the First Amendment

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[13]The inconsistency of the majority's approach is made evident by its treatment of *Halkin* and *San Juan Star*. The majority states the standards articulated by those courts are not mandated by the constitution. Majority at 248. Yet the standards developed in both cases are less stringent than the heavy presumption against validity, which the majority purports to apply in dispensing with this case.

concerns as to protective orders, but I do not feel the First Amendment analysis is the same regardless of the mode by which information is acquired. *See Halkin*, at 187–88, citing *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 778, 783, 55 L. Ed. 2d 707, 98 S. Ct. 1407 (1978). The court has legitimate concerns in administering the discovery process, which may affect the extent to which First Amendment expression remains unimpaired. The same evil does not result "from attaching certain conditions to government-connected activity as from imposing such conditions on persons not connected with government." Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L. Rev. 1439, 1448 (1968).

While the *Halkin* court does not focus on these legitimate concerns, the standards it articulates provide trial courts with the flexibility needed to address such concerns. *See Brink v. DaLesio*, 82 F.R.D. 664, 678 (D. Md. 1979) ("At most, the [*Halkin*] opinion will perhaps prompt a more reasoned and precise statement by judges in issuing Rule 26(c) orders.")

B

The court in *San Juan Star* established a standard somewhat less restrictive than the *Halkin* majority; a standard of good cause that "incorporates a 'heightened sensitivity' to the First Amendment concerns at stake", 662 F.2d at 116. Judge Coffin articulated this heightened sensitivity thus: "We look to the magnitude and imminence of the threatened harm, the effectiveness of the protective order in preventing the harm, the availability of less restrictive means of doing so, and the narrowness of the order if it is deemed necessary." *San Juan Star*, at 116. With respect to the "threatened harm", Judge Coffin felt it should be evaluated on a "sliding scale . . . as the potential harm grows more grave, the imminence necessary is reduced." *San Juan Star*, at 116. More explicitly than did the court in *Halkin*, the court in *San Juan Star* recognized the legitimate concerns a court has in administering the

discovery process which might justify subordination of First Amendment interests that could not otherwise be limited. Concerns for the administration of the discovery process and for minimizing injury to parties are legitimate bases for restricting First Amendment interests in the discovery context.

C

While the United States Supreme Court has not addressed First Amendment concerns in discovery, I believe First Amendment interests must be weighed much as the Court required in *Pickering v. Board of Educ.*, 391 U.S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731 (1968). In *Pickering*, the Court dealt with the question of a teacher's First Amendment rights within the context of his employment. While the Court rejected unequivocally the Illinois Supreme Court's assertion that an individual may be forced to give up constitutional rights as a condition of public employment, the Court conceded:

> At the same time it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

391 U.S. at 568. Because of the multitude of situations that might arise, the *Pickering* Court did not presume to set forth any general standard for balancing the respective interests. Nor would I presume to do so in this case. Nonetheless, the *Pickering* Court did require that the school's legitimate interests *actually* be served by a limitation on speech, and in a subsequent case dealing with the same concerns, the Court required a material and substantial interference with a school's interests in order and discipline to justify curtailment of First Amendment liberties. *Tinker*

v. Des Moines Indep. Comm'ty Sch. Dist., 393 U.S. 503, 508–09, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969). I believe both *Halkin* and *San Juan Star* provide helpful guidelines to a trial court in striking the right balance. *See* Duke Note, *supra* at 793–99. Below, I outline some of the questions a trial court should ask in determining if a protective order should issue:

1. What is the extent of the First Amendment interest enjoined by the protective order?

As the *Halkin* court indicated, "First Amendment interests will vary according to the type of expression subject to the order." 598 F.2d at 191. The majority distinguishes *Halkin* and *San Juan Star* as cases involving intense public concern while the matters before us are of less public consequence. Even assuming the validity of the majority's assertion, it has not provided an analytical framework by which we as a reviewing court will be able to differentiate this case from one in which the First Amendment interest is more substantial.

2. What is the harm threatened by failure to issue a protective order?

As the *Halkin* court indicated, "widely varying interests" may be advanced in support of a protective order. The rule itself allows for such breadth of interest: "the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . ." CR 26(c). As Judge Coffin indicated, the degree of imminence of any harm will vary in inverse proportion to the magnitude of the harm. An additional concern here is the question of how central the information is to the case. If the information is of central relevance, a party's interest and expectation in privacy might be diminished. At the same time, the centrality of the information may affect a party's right to a fair trial.

3. What is the status of the parties seeking a protective order and against whom the protective order is sought?

The expectation in privacy will vary if the party seeking the order is a public body or a private person, or if the

individual is a nonparty or central litigant. If a protective order is sought against a suing party, it might impede the party's First Amendment right to freely litigate, especially if such action is brought for a public purpose (*e.g.*, civil rights, antitrust actions). *See Halkin*, 598 F.2d at 187; *In re Primus*, 436 U.S. 412, 56 L. Ed. 2d 417, 98 S. Ct. 1893 (1978). If, on the other hand, the defendant is the party against whom the protective order is sought, the First Amendment right to litigate seems less in jeopardy. In addition, the court must be sensitive to concerns militating in favor of a protective order, namely a party's First Amendment interest "to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714, 51 L. Ed. 2d 752, 97 S. Ct. 1423 (1977). As one commentator has indicated, "In the absence of sufficient justification, a court's *denial* of a motion for a protective order may itself be an unconstitutional infringement of the producing party's first amendment rights." (Italics mine.) Duke Note, 1980 Duke L.J. at 793.

4. What specific concerns does the court have in issuing protective orders?

The court must determine whether the protective order will facilitate the administration of justice or undermine one of the purposes of the litigation, *i.e.*, whether it prevents an abuse of process by a party or restrains a significant First Amendment interest. Besides the court's concern for minimizing injury to parties, the court has separate concerns for ensuring discovery is expeditious. If the absence of a protective order might mean a party's evasion of its duty to disclose and an end to voluntary compliance with discovery processes, a protective order may be the best means of insuring the orderly administration of discovery.

Once the interests for and against a protective order have been identified, the court must balance them, with the burden of justification resting on the party seeking the protective order. No simple rule will apply in all cases. If the government seeks to protect from dissemination highly relevant information regarding graft among public officials

because of the annoyance and embarrassment of public disclosure, the balance will be struck differently than when a private party seeks to protect from public scrutiny personal details which are of questionable materiality to the case. Needless to say, courts should attempt to find the least restrictive accommodation of all interests, those of the parties and the court. *See In re Halkin*, 598 F.2d 176, 191 (D.C. Cir. 1979); *In re San Juan Star Co.*, 662 F.2d 108, 116 (1st Cir. 1981). Often the only alternative to a protective order will be denial of access—a result which the *Halkin* court indicated benefits no one.[14] A natural concomitant of finding the best accommodation of all interests is that the protective order be narrow and precise to protect against the specific harm threatened. *Halkin*, at 191; *San Juan Star*, at 116. This does not mean that a court must supervise the discovery of every document. *San Juan Star, supra; Tavoulareas v. Piro*, 93 F.R.D. 11, 24 (D.D.C. 1981). To require as much would substantially undermine the purposes of discovery. Nevertheless, the court should restrain from publication only that which need be to prevent the harm that has been identified. Nor should the court restrain information for a period of time longer than is necessary. *See Halkin, supra*. Implicitly, this would mean the termination of the protective order once information protected is a matter of public record.

The above discussion is meant as a guide to trial courts, not as a fixed rule. The major premise of the discussion is that where First Amendment interests can be identified, the harm against which a protective order guards must be balanced against those First Amendment interests, with the burden of justification lying with the party seeking the restraint.

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[14]The *Halkin* court did identify alternatives to protective orders when the interest protected is an individual's right to a fair trial. *See Halkin*, 598 F.2d at 195.

IV

Turning to this case, the trial judge issued both a protective order and a memorandum opinion regarding the protective order. The primary problem with the protective order is that it does not attempt to weigh petitioner's First Amendment interests in determining whether a protective order should issue. As the trial judge states at page 2 of his memorandum opinion:

> Protective Orders are entered routinely in cases where the party seeking the Protective Order has a reasonable basis for its request that the information gained through discovery be used by the discovering party for no purpose other than the legitimate purposes of the case in which discovery was granted.

Such a test, which is identical to the majority's standard, does not require any "heightened sensitivity" to First Amendment concerns.

In addition, the court's "reasonable basis" in this case is simply too speculative and general to justify the restraint of First Amendment freedoms. The trial judge states on page 4 of his memorandum opinion:

> If Protective Orders are not available, it could have a chilling effect on a party's willingness to bring his case to court. If the absence of a Protective Order has the effect of denying a party access to the courts, this would be a result just as damaging to justice and to individual rights as can result from an impingement upon First Amendment rights. I would put access to the courts on an equal plane of importance with freedom of the press because it is through the courts that our fundamental freedoms are protected and enforced.

And the protective order states:

> the absence of protective orders would have a chilling effect on a person's willingness to bring a case to court and that this would have the effect of denying persons access to the courts . . .

As a general proposition, the court's statement is certainly true in some cases. But is it true in this case? Would the risk of dissemination cause Rhinehart to drop his libel

action? Or are there other specific concerns for minimizing injury and embarrassment to respondents that outweigh the petitioner's First Amendment interest in dissemination? Such concerns might well exist in this case, but they are not identified by the court. As a threshold consideration, the trial court must identify the specific harm in this case that warrants a protective order. Courts have generally required a "particular and specific demonstration of fact" to justify protective orders. *General Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973), *cert. denied*, 414 U.S. 1162 (1974). *See United States v. IBM Corp.*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975) (clearly defined and very serious injury); *Neonex Int'l Ltd. v. Norris Grain Co.*, 338 F. Supp. 845 (S.D.N.Y. 1972); *Glick v. McKesson & Robbins, Inc.*, 10 F.R.D. 477 (W.D. Mo. 1950); *United States ex rel. Edelstein v. Brussell Sewing Mach. Co.*, 3 F.R.D. 87 (S.D.N.Y. 1943). *Cf. Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101, 68 L. Ed. 2d 693, 101 S. Ct. 2193, 2200 (1981) (Court struck down restraining order under Fed. R. Civ. P. 23 which affected First Amendment interests as an abuse of discretion because it was not based on a "clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties."). Here a specific finding by the court is required to insure that the restraint is justified.

On remand, I would call attention to two other concerns I have with the protective order. The order is narrow in that it restricts only the use of information gained through the discovery processes. Trial court memorandum opinion, at 3. The protective order is not narrow in two important respects, however. While paragraph 2 of the order seems to limit restrictions on dissemination to financial data and certain names and addresses, paragraph 3 states broadly (and somewhat inconsistently) "information gained by a defendant through the discovery process may not be published by any of the defendants or made available to any news media for publication or dissemination." While paragraph 3 is apparently limited by the specific information

discussed in paragraph 2, the court's opinion perpetuates the notion that *all* discovery information is restrained by the protective order:

> The intent and purpose of the protective order will be that the discovering party make no use or dissemination of the information gained through discovery other than such use as is necessary in order for the discovering party to prepare and try the case. It follows that information gained through the discovery process will not be published by the Seattle Times or made available to any news media for publication or dissemination.

Trial court memorandum opinion, at 3. Similarly, the restraint is not limited in time. Literally, the order restrains from publication information that is introduced as evidence at trial. On remand, I would require the court, if it should issue an order, to specify the conditions of the restraining order more carefully.

Through this opinion, I do not mean to imply that a protective order may not issue in this case. I would simply require the trial court to undertake the *ad hoc* balancing test outlined above. This the trial court has not done. A specific harm has not been identified by the trial court, First Amendment interests are given no recognition, and the order does not reflect the narrowness which derives from a concern for such interests. I would vacate the protective order and remand to the trial court to reconsider the request for a protective order in light of the concerns identified in this opinion.

PEARSON, J., concurs with UTTER, J.

APPENDIX B

THE SUPREME COURT OF WASHINGTON

Nos. 47938-1, 48155-5

KEITH MILTON RHINEHART, *et al.*,
Respondents,

v.

THE SEATTLE TIMES COMPANY, *et al.*,
Petitioners.

ORDER DENYING MOTION FOR RECONSIDERATION

The Court having decided by majority vote that the respondents' motion for reconsideration should be denied,

It is ordered that the motion be and it hereby is denied.

Dated this 27th day of January, 1983.

/s/ William H. Williams
WILLIAM H. WILLIAMS
Chief Justice

APPENDIX C

THE SUPREME COURT OF WASHINGTON

No. 47938-1

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person; LILLIAN YOUNG, a married person; TONI STRAUCH, a married person; SYLVIA CORWIN, and ILSE TAYLOR, representing women who are members of the Aquarian Foundation on or after March 17, 1978,

Respondents,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times; WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA WILSON; JOHN MCCOY and KAREN MCCOY,

Petitioners.

No. 48155-5

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person; LILLIAN YOUNG, a married person; TONI STRAUCH, a married person; SYLVIA CORWIN, and ILSE TAYLOR, representing women who are members of the Aquarian Foundation on or after March 17, 1978,

Petitioners,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times; WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA WILSON; JOHN MCCOY and KAREN MCCOY,

Respondents.

RULING GRANTING DISCRETIONARY REVIEW AND CONSOLIDATING CASES

A defamation action brought by Rhinehart, et al., against The Seattle Times, et al., is now in the pretrial stage in King County Superior Court. In cause No. 47938-1, this court granted the Times' motion for discretionary review of a protective order entered by the trial court which precludes the Times from publishing certain information obtained through discovery. In cause No. 48155-5, Rhinehart moves for discretionary review of a trial court order compelling certain discovery. The motions which resulted in the two trial court orders were to a great extent presented to and considered by the trial court jointly.

It appears doubtful that the order compelling discovery by itself would merit review by this court under the standards of RAP 2.3(b) and 4.2(a). However, different considerations are implicated here given that this court has already agreed to review the propriety of the protective order. This is because the court's views on the proper scope of discovery in a case such as this may have some bearing on the court's ultimate decision about whether use of discovered information may ever be limited. I therefore believe it appropriate to grant Rhinehart's motion for discretionary review of the order compelling discovery, and to consolidate further appellate proceedings under cause No. 47938-1. This will bring before the court the entire record which was before the trial court when it entered both the protective order and the order compelling discovery. It will also permit the court to address the order compelling discovery, if it wishes to do so, without facing preliminary procedural hurdles.

The parties should recognize that this ruling does not oblige the court to decide the issues raised by Rhinehart as to the propriety of the order compelling discovery. After full argument as to both orders the court may well be of the view that any opinion on the validity of the order compelling discovery would be premature and is unnecessary to fully address the

protective order issues. Even if that should be the court's conclusion, however, nothing will have been lost by permitting argument on both orders in a consolidated proceeding.

The motion for discretionary review in cause No. 48155-5 is granted, and that review is consolidated with cause No. 47938-1. The briefing schedule previously established in cause No. 47938-1 will apply to the consolidated action, with the addition of a respondents' reply brief to be filed by Rhinehart on or before January 8, 1982.

DATED at Olympia, Washington, this 3rd day of November, 1981.

/s/ GEOFFREY CROOKS
Commissioner

APPENDIX D

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

No. 80-2-02460-4

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person, LILLIAN YOUNG, a married person, TONI STRAUCH, a married person, SYLVIA CORWIN, and ILSE TAYLOR, representing women who were members of the Aquarian Foundation on or after March 17, 1978,

Plaintiffs,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times; WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA KAREN WILSON; JOHN MCCOY and KAREN MCCOY,

Defendants.

ORDER COMPELLING DISCOVERY

THIS MATTER came on for hearing on defendants' second motion to compel discovery (filed December 5, 1980) and plaintiffs' request for protective orders. The court heard oral argument on January 27, 1981, and issued an opinion by letter dated February 17 and signed on February 25, 1981. Pursuant to the opinion, both sides have submitted supplemental responses, and plaintiffs have moved for reconsideration of certain portions of this court's letter opinion. Having again heard oral argument on April 17 and May 29, having considered the additional submissions by the plaintiffs and defendants, and having submitted a letter opinion indicating an intention to enter a protective order which is being signed as a separate order, and being fully advised, NOW, THEREFORE, THE COURT HEREBY ENTERS THE FOLLOWING

ORDER

1. Plaintiff Rhinehart is ordered to answer Interrogatory No. 28 (all interrogatory references herein are to defendants' first interrogatories) concerning gifts and donations since February 15, 1975, whether received by plaintiff Rhinehart as taxable income or as nontaxable income, and whether classified as gifts or donations from personal services or as gifts for private readings, private group seances, master classes, or in connection with sacred objects. The cutoff date of February 15, 1975, does not prevent defendants from seeking an earlier date on a proper showing.

2. Interrogatory No. 31 asked plaintiff Rhinehart to disclose the name and address of everyone who has been a member of the Aquarian Foundation at any time in the past ten years. Interrogatory No. 27 to the Aquarian Foundation asks the same question. In lieu of answering the interrogatory at this time, plaintiffs Rhinehart and the Aquarian Foundation must provide defendants with documentary evidence in support of the Aquarian Foundation's supplemental answer to Interrogatory No. 27, and plaintiffs are ordered to make the bookkeeper referred to in the supplemental answer available for a deposition by defendants, and they are ordered to have those portions of the books and records used to make the diminished membership compilation available for examination at the deposition by defendants' counsel. Following the deposition, if defendants feel that they still cannot defend against the claim of diminished membership without obtaining the names and addresses of the Aquarian Foundation members, they may renew their motion to compel plaintiff Rhinehart to answer Interrogatory No. 31 and to compel the Aquarian Foundation to answer Interrogatory No. 27.

3. Plaintiff Rhinehart's objection to Interrogatory No. 38 is sustained because he has already answered the question in his deposition.

4. The existing answer to Interrogatory No. 42 is unresponsive, and plaintiff Rhinehart is ordered to answer Interrogatory No. 42.

5. Plaintiff Aquarian Foundation is ordered to answer Interrogatory No. 5, and is specifically ordered to include the addresses which were withheld in the supplemental answers dated March, 30, 1981. In answering this interrogatory, plaintiff Aquarian Foundation is required to include information within the knowledge of its present or former attorneys, and specifically former attorney Jack E. Wetherall is directed to assist in answering this interrogatory.

6. The information requested in Interrogatory No. 15 to the Aquarian Foundation is not protected by the attorney-client privilege, and the Aquarian Foundation is ordered to file a responsive answer.

7. Plaintiff Aquarian Foundation is ordered to answer Interrogatory No. 19. The supplemental answer of March 30, 1981, is unresponsive.

8. Plaintiff Aquarian Foundation is ordered to answer Interrogatory No. 21 to the extent of the information available to or known to the Aquarian Foundation.

9. Plaintiff Aquarian Foundation is ordered to answer Interrogatory No. 24 concerning all gifts and donations since February 15, 1975, to the extent that such information exists in its records. The scope of this interrogatory includes donations for renewal of membership or donations for new memberships, and contributions to causes, marches, private readings, group seances, classes, or in connection with sacred objects.

10. Plaintiff Aquarian Foundation's obligations with respect to Interrogatory No. 27 are already covered in paragraph 2 of this order.

11. Plaintiff Kathi Bailey is ordered to answer Interrogatory No. 7, which has been done in her supplemental answers dated March 26, 1981.

12. Defendants' motion to compel further answer to Interrogatory No. 9 is denied, because the court was not presented with any precise objection to the response as stated.

13. Plaintiff Bailey is ordered to answer Interrogatory No. 10, which has been done in her supplemental answers dated March 26, 1981.

14. Plaintiff Bailey is ordered to answer Interrogatory No. 14. Her original answer was nonresponsive, and her supplemental answer of March 26, 1981, is likewise nonresponsive. As a member and assistant spiritual leader of the Aquarian Foundation, plaintiff Bailey is required to answer this interrogatory to the extent of her present knowledge.

15. Plaintiff Bailey is ordered to answer Interrogatory No. 19, which has been done in her supplemental answers of March 26, 1981.

16. Plaintiff Bailey is ordered to answer Interrogatory No. 25.

17. Plaintiff Bailey is ordered to answer Interrogatory No. 28 for the time period from February 15, 1975, to the present.

18. Plaintiff Bailey is not required to answer Interrogatory No. 31 at this time, pending completion of the deposition referred to in paragraph 2 of this order.

19. Plaintiff Bailey is not ordered to answer Interrogatory No. 33. Defendants may inquire by deposition as to whether she had personal knowledge of the breast augmentation surgery, whether plaintiff Rhinehart told her of it, and whether he told her why he had the surgery.

20. Plaintiff Bailey is ordered to answer Interrogatory No. 34, limited to plastic surgery on plaintiff Rhinehart's face.

21. Plaintiff Bailey is not ordered to answer Interrogatory No. 38. Defendants may inquire by deposition as to whether she knows if plaintiff Rhinehart shares the anatomy of both sexes, how she acquired that information, and what is the extent of her knowledge.

22. Plaintiff Bailey is ordered to answer Interrogatory No. 41, which has been done in her supplemental answers of March 26, 1981.

23. Plaintiff Bailey is not ordered to answer Interrogatory No. 42.

24. Plaintiff Lillian Young is ordered to answer Interrogatory No. 7, which has been done in her supplemental answers dated March 25, 1981.

25. Plaintiff Young is ordered to answer Interrogatory No. 10, which has been done in her supplemental answers.

26. Plaintiff Young is not required to answer Interrogatory No. 31 at this time for the reasons stated in paragraph 2 of this order.

27. Plaintiff Young is ordered to answer Interrogatory No. 41, which has been done in her supplemental answers of March 25, 1981.

28. Plaintiff Toni Strauch is ordered to answer Interrogatory No. 10, which has been done in her supplemental answers of March 26, 1981.

29. Plaintiff Strauch is ordered to answer Interrogatory No. 19, which has been done in her supplemental answer.

30. Plaintiff Strauch is not required to answer Interrogatory No. 31 at this time for the reasons stated in paragraph 2 of this order.

31. Plaintiff Strauch is ordered to answer Interrogatory No. 41, which has been done in her supplemental answers.

32. Plaintiff Ilse Taylor is ordered to answer Interrogatory No. 19, which has been done in her supplemental answers dated March 27, 1981.

33. Plaintiff Taylor is not ordered to answer Interrogatory No. 42.

34. The court declines to rule at this time on the adequacy of the document production heretofore requested or made by the parties, and instead directs that a new request for production of documents be filed by defendants in strict compliance with Civil Rule 34. Plaintiffs shall respond to the request in

strict compliance with Rule 34. This ruling shall apply also to the requested production of video and sound tapes.

35. Except where indicated otherwise, every order to answer a specific interrogatory requires the answering party to answer completely and fully under oath as to all information which is available to that party or his, her, or its counsel. Answers shall be served and filed within 30 days after entry of this order, provided that if any defendant seeks review of the protective order entered in this cause, answers shall not be due until such time as the court shall determine by order entered after the review process has been completed, with the court reserving the right to redetermine what discovery shall be ordered in the event the protective order is modified on review.

DATED this ____ day of June, 1981.

Jack P. Scholfield, Judge

JACK P. SCHOLFIELD, JUDGE
KING COUNTY SUPERIOR COURT

Presented by:

EDWARDS AND BARBIERI

By Malcolm L. Edwards

MALCOLM L. EDWARDS
Attorneys for Plaintiffs

APPENDIX E

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

No. 80-2-02460-4

KEITH MILTON RHINEHART, a single person; The Aquarian Foundation, a Washington not-for-profit corporation; et al.,
Plaintiffs,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times, et al.,
Defendants.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES TO KEITH MILTON RHINEHART

INTERROGATORY NO. 2a: If you have been the recipient of gifts or donations in the past ten years, state the name and address of each donor, the date of the gift, the amount of the gift, and the circumstances of each gift.

OBJECTION:

I cannot provide you with the information you request with reference to the various donors of gifts, as I have personally pledged to the donors, and our Church has personally pledged to the donors, secrecy with respect to any gifts and donations made to the Church or any of its spiritual leaders. I cannot violate this pledge, which I consider morally and spiritually binding.

OBJECTION:

To provide the information you request with respect to the donors would violate the donors' rights to privacy, freedom of religion, and freedom of association. In addition, as a matter of conscience based on my religious faith, the disclosure would violate the members' rights to privacy, freedom of religion,

and freedom of association which are considered to be a fundamental part of the Aquarian Foundation's religious beliefs.

OBJECTION:

The question is too broad. As a result of the court's ruling on the motion for partial summary judgment, the earliest publication which the court held may be involved is on February 17, 1978. Providing information back to 1971 would not be relevant to the subject matter involved in the pending action, nor does the information sought appear reasonably calculated to lead to the discovery of admissible evidence. CR 26(b)(1) Hereafter, this objection will be expressed as lack of relevance or not relevant.

RESPONSE:

I will not be claiming as damages in this action that gifts have declined. Thus, questions directed to gifts are not relevant. I will be claiming as damages a decline in "donations" which are made to me which are classified by the Internal Revenue Service as payment for services. These donations are taxable income to me. I have previously supplied tax returns reflecting the income items which are donations, by year. After the publication of the materials in this lawsuit, and after my trip to Bogota, I discontinued many of my service activities which previously gave rise to taxable donations. These were discontinued because of my physical and emotional health and fear for my person. These same factors have caused me to perform services where the number of people in attendance is smaller. This results in reduced donations for services because fewer people are involved to contribute. My claim for damages relating to donations will be limited to a loss of income occasioned by this drop in my activity, which I will testify is a result of fears, concerns, apprehensions, and events brought about by the publication of the libelous articles and of the articles invading my privacy.

INTERROGATORY NO. 31: State the name and address of everyone who has been a member of the Aquarian Foundation at any time in the past ten years.

OBJECTION:

I make the same objection to this interrogatory as I have made to Interrogatory No. 28 with reference to the disclosure of the names of persons who made gifts.

RESPONSE:

As a part of *my* claim, I will not be asserting that membership in the Aquarian Foundation has declined. The Aquarian Foundation, as a separate party, will make such a claim. The basis of the claim will be set forth in the answers of the Aquarian Foundation.

Keith Milton Rhinehart

KEITH MILTON RHINEHART

SUBSCRIBED AND SWORN to before me this 14th day of April, 1981.

JANICE ROBERSON

NOTARY PUBLIC in and for the State of Alabama, residing at Dothan, Alabama

APPENDIX F

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

No. 80-2-02460-4

KEITH MILTON RHINEHART, a single person; The Aquarian Foundation, a Washington not-for-profit corporation; et al.,
Plaintiffs,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times, et al.,

Defendants.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES TO PLAINTIFF AQUARIAN FOUNDATION, A WASHINGTON NOT-FOR-PROFIT CORPORATION

INTERROGATORY NO. 5: Identify by name, title and address each individual who has been contacted by you, your attorneys, or someone acting on behalf of you or your attorneys in connection with the claims in the complaint.

ANSWER:

The former attorneys for the Foundation have refused to provide us with the names and addresses of any persons they may have contacted. They may not have contacted anyone other than those we know about. The answer given here is to the best of the Foundation's present knowledge and recollection, and includes all names that we have contacted or that any of our attorneys have contacted that we know about or that our present attorneys know about.

First, reference is made to the answer to this question in the Supplemental Answers to Interrogatories of the other individual plaintiffs. We do not intend to duplicate here, except by inadvertence.

Michael Herr
5437 Beach Drive S.W.
Seattle, WA 98136

Alan and Ann Jenne,
Spiritual Leaders of Aquarian Foundation Meetings
Representative,
Lexington Hotel
New York, N.Y.

Peter and Joan Stoutt,
Spiritual Leaders of Aquarian Foundation
104 Lake Highland Shopping Village
700 N. Buckner Blvd.
Dallas, TX

Todd Bailey
1777 Ala Moana Blvd.
No. 1514
Honolulu, HI 96815

Mary Lou McIntyre*

Robert Plante*

Weston Bailey,
1777 Ala Moana Blvd.
No. 1514
Honolulu, HI 96815

Bill and Lyla Powers*

Lou Ferrigno
Address Unknown

Catherine Harold,
Secretary, Aquarian Foundation
315 — 15th Avenue East
Seattle, WA 98122

Linda and Alvis Dunn
315 — 15th Avenue East
Seattle, WA 98112

Bessie Sawyer*

Gretchen Smith*

Jilleen and Tony Avalos
c/o Peter and Joan Stoutt,
whose address is listed above

Colonel Chris Wilcox
Present address unknown;
May be reached c/o Pentagon, Washington, D.C.

Maurice Barbanell, Editor
Psychic News
69 Queen Street
London, England

Dr. Alan Kenney*

Kay McMann*

Frank Conlon, Ph.D.
112A Smith Hall
University of Washington
Seattle, WA 98195

Affiliation: Associate Professor of History, Comparative Religion, and South Asian Studies, University of Washington

Richard Sherburne, S.J., Ph.D.
228 Marian Hall
Seattle University
Seattle, WA 98122

Affiliation: Associate Professor of Religion and Theology, Seattle University

Gary Chamberlain, Ph.D.
Theology Department
Seattle University
Seattle, WA 98122
626-5335

Affiliation: Associate Professor of Theology and Religious Studies, Seattle University

Joseph L. Davis, Ph.D.
School of Religion
Seattle Pacific University
Seattle, WA 98119

Affiliation: Professor of Biblical Studies, Seattle Pacific University

*We object to giving out the addresses of these persons for the reasons noted in our objection to Interrogatory No. 21.

INTERROGATORY NO. 19: State the name of each bank, credit union, or other lending institution to which you have submitted financial statements in the past ten years.

ANSWER:

The bank to which we have submitted a financial statement, which bank was not disclosed in our former answer to Interrogatory No. 19, is in the area where our minister now resides. He has been subject to numerous death threats since the Times articles. If we have to give this out, he will have to move once again to protect his personal safety.

INTERROGATORY NO. 21: State the name and address of the following: Mr. Mel Wertz; Mrs. Juilie Seguin; Mr. Allen Jenne; Mr. Bob Girrard; Ms. Doris Walton; Ms. Florence Ramoy.

OBJECTION:

The Church has at all times pledged to its members who are not leaders of a branch and to other persons who have associated with or share an interest in the Church that these persons' names and addresses would never be revealed without their consent. We cannot disclose the addresses of the named individuals without violating that pledge, which we would consider to be a violation of a legal, moral, and spiritual oath. To require us to provide this information would require us to violate the precepts of the Church with respect to right of privacy, freedom of association, and freedom of religion; and, we believe, the Constitutional guarantees of right of privacy, freedom of religion, and freedom of association. This is also done to protect these people from death threats and acts intended to physically harm them, and from harassment. If the defendants want to speak to any of the named individuals and will so advise our attorneys, we will determine whether those named individuals are willing to voluntarily speak to the defendants and assist in arranging a voluntary meeting. If any of these individuals are unwilling to voluntarily speak to the defendants, and if defendants wish to take their depositions,

we will cooperate in the effort to take the depositions of these individual persons.

INTERROGATORY NO. 24: If you have been the recipient of gifts or donations in the past ten years, state the name and address of each donor, the date of the gift, the amount of the gift, and the circumstances of each gift.

ANSWER:

We have been the recipient of gifts or donations in the past ten years. We do not have the detailed information by donor that you request. We do not have the names and addresses of the donors, or the dates and amounts of gifts, or the circumstances of each gift by donor.

The Church does receive donations for literature, for tapes, donations at services, donations for seances and for billet readings, special donations, donations in connection with sacred objects, and bequests. We do not, however, have the particular information you request.

OBJECTION:

The request is too broad, as it covers the last ten years, and plaintiffs' complaint has been limited to a recent time period by a decision of the court. As such, the request seeks information that is not relevant under the test established by Rule 26(b).

OBJECTION:

We cannot provide you with the information you request with reference to the various donors of gifts, as we have personally pledged to the donors, and our Church has personally pledged to the donors, secrecy with respect to any gifts and donations made to the Church or any of its spiritual leaders. We cannot violate this pledge, which we consider morally and spiritually binding.

OBJECTION:

To provide the information you request with respect to the donors would violate the donors' rights to privacy, freedom of

religion, and freedom of association. In addition, as a matter of conscience based on our religious faith, the disclosure would violate the members' rights to privacy, freedom of religion, and freedom of association which are considered to be a fundamental part of the Aquarian Foundation's religious beliefs.

INTERROGATORY NO. 27: State the name and address of everyone who has been a member of the Aquarian Foundation at any time in the past ten years.

OBJECTION:

We incorporate by reference the objections made to Interrogatory No. 24.

RESPONSE:

The evidence that the Foundation will introduce in support of its claim of diminished membership in the Aquarian Foundation will be membership numbers by year and by quarter year for the years 1978 and 1979. These membership numbers will be further divided between membership in Seattle, membership in Hawaii, and membership in other branches of the Church. A copy of the tabulation of membership as so described is attached to this answer as Schedule A.

The membership numbers were produced by the bookkeeper for the Church, based on books kept by her which show, by Church and branches, the total dollar amount of membership dues collected for the relevant time periods. She obtained the numbers by dividing the dollars by the amount of the membership dues as of the period in question. The documentary evidence in support of this answer will be provided separately to the court, with the request that the court not make the documentation available until the court has had an opportunity to pass on our motion to reconsider a request for a protective order.

AQUARIAN FOUNDATION

/s/ By: Catherine Harold
CATHERINE HAROLD
Its Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

CATHERINE HAROLD, being first duly sworn, on oath deposes and states:

I am the Secretary of the Aquarian Foundation; I have read the within and foregoing document, know the contents thereof, and believe the same to be true.

/s/ Catherine Harold
CATHERINE HAROLD

SUBSCRIBED AND SWORN to before me this 30th day of March, 1981.

/s/ Sharon L. Dunstan
SHARON L. DUNSTAN
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

SCHEDULE A
AQUARIAN FOUNDATION—NUMBER OF MEMBERS

Year	Total	Wash.	Hawaii	Other Locations
1975	569	395	138	36
1976	754	366	172	216
1977	794	346	140	308
1978 1st QTR	355	175	84	96
1978 2nd QTR	187	54	33	100
1978 3rd QTR	259	82	54	123
1978 4th QTR	81	26	17	38
TOTAL 1978	882	337	188	357
1979 1st QTR	503	237	93	173
1979 2nd QTR	146	51	26	69
1979 3rd QTR	103	17	2	84
1979 4th QTR	119	24	12	83
TOTAL 1979	871	329	133	409
1980	557	183	70	304

APPENDIX G

JACK P. SCHOLFIELD
PRESIDING JUDGE
KING COUNTY SUPERIOR COURT
SEATTLE, WASHINGTON 98104

February 17, 1981

Davis, Wright, Todd, Riese & Jones
Attorneys at Law
4200 Seattle-First National Bank Bldg.
Seattle, Washington 98154

Attn: Mr. Evan L. Schwab

Mr. Malcolm L. Edwards
Attorney at Law
3701 Bank of California Center
Seattle, Washington 98164

Mr. Jack E. Wetherall
Attorney at Law
17130 Avondale Way N.E.
Suite 113
Redmond, Washington 98052

Mr. Lawrence R. Mills
Attorney at Law
3930 Seattle-First National Bank Bldg.
Seattle, Washington 98154

Re: Rhinehart, et al. v. The Seattle Times, et al., King County Cause No. 80-2-02460-4

Defendants' Motion to Compel Production and Plaintiffs' Motion For Protective Order

Dear Counsel:

The defendants have moved for an order compelling discovery which relates both to answering interrogatories and produc-

tion of documents and things and the plaintiffs have moved for a protective order in respect to any material the court orders produced or disclosed.

Paragraph five of the defendants' motion relates to certain interrogatories propounded to various plaintiffs and I will deal with those first.

Defendants request "complete and responsive answers" to Interrogatories No. 28, 31, 38 and 42 directed in Defendants' First Interrogatories to Plaintiff Rhinehart.

Interrogatory No. 28 reads as follows:

> If you have been the recipient of gifts or donations in the past ten years, state the name and address of each donor, the date of the gift, the amount of the gift, and the circumstances of each gift.

The plaintiff objected to this interrogatory as being "not within the purview of discovery, and to answer the same would invade the privacy and other constitutional rights of members of the Aquarian Foundation."

Numerous cases dealing with objections to Civil Rule 33 have required that objections to interrogatories be sufficiently factual and specific that an attorney or a court reading the objection will know the precise reasons being asserted to support the objection.

Plaintiffs have asserted as a basis for claiming damages in this case that voluntary support for the Aquarian Foundation has substantially diminished as a result of the allegedly libelous publications. It is very difficult for me to see how plaintiffs can make this allegation on the one hand and on the other hand object to inquiry as to the number and amount of donations or gifts as being irrelevant or an unwarranted invasion of privacy. The interrogatory is directed to gifts and donations to the plaintiff Rhinehart. It is entirely possible, of course, that plaintiff Rhinehart has received gifts over the past ten years which have nothing to do with the damage issues in this case.

I will permit the plaintiff Rhinehart to file an amended answer to Interrogatory No. 28 if he cares to do so. In the absence of an amended response showing a definite reason why Interrogatory No. 28 should not be answered, the plaintiff Rhinehart will be directed to respond fully to Interrogatory No. 28. Plaintiff Rhinehart will have fifteen days from receipt of this letter by his counsel in which to file any such amended response.

Interrogatory No. 31 to plaintiff Rhinehart is as follows:

> State the name and address of everyone who has been a member of the Aquarian Foundation at any time in the past ten years.

The objection to Interrogatory 31 is based upon an asserted constitutional right to privacy of each member of the Aquarian Foundation and their right to exercise freedom of religious choice. The objection also asserts that the question is "not within the realm of discoverable evidence" and the sole purpose of the interrogatory is for harassment.

Here again, the interrogatory is directed to the claim by plaintiffs that membership in the Aquarian Foundation has suffered because of the allegedly libelous publications by the defendants. The defendants have the right to investigate and test the accuracy of this claim. The question boils down to whether or not stating the name and address of every member at any time in the past ten years is necessary in order for defendants to defend against the claim of diminished membership.

The plaintiffs have the burden of proof on the issue of diminished membership. The theory of pretrial discovery is that a defendant is entitled to learn, within reasonable limits, in advance of trial the nature and extent of evidence he will be required to meet on a particular issue.

I will give the plaintiffs the option of setting forth in response to this interrogatory, a clear and unambiguous description of the evidence plaintiffs will introduce in support of their claim of diminished membership in the Aquarian Foundation. If documentary evidence is to be introduced in support of the claim, then such documentary evidence must be provided as

part of the response to Interrogatory No. 31. Exercise of this option by the plaintiffs would provide defendants with the evidence they must meet on the issue. If plaintiffs do not care to exercise this option, then Interrogatory No. 31 must be answered in full. If the plaintiffs do exercise the option, the defendants are not hereby precluded from further discovery procedures directed toward the optional answer to Interrogatory No. 31.

Interrogatory No. 38 reads as follows:

> Do you share the anatomy of both sexes? Explain.

The plaintiffs' objection to Interrogatory No. 38 asserts that it is irrelevant; that its only purpose is to harass and annoy the plaintiff and that answering the question would be an invasion of plaintiff's privacy.

It is obvious, of course, that a person's anatomy is normally a private and confidential matter. A litigant would be required to discuss it only if it is clearly relevant and material to an issue in the case. I do not have before me at this time anything that tells me that whether or not the plaintiff Rhinehart shares the anatomy of both sexes is relevant and material to the issues in this case. Under these circumstances, I think it would be improper for the court to rule on Interrogatory No. 38 at this time. I will give the defendants fifteen days from the date of receipt of this letter to make a written showing of why an answer to Interrogatory No. 38 is relevant and material to the issues in this case. In the absence of such a showing the objection to Interrogatory 38 will be sustained.

Interrogatory No. 42 reads as follows:

> Either list all of your current assets and liabilities, or attach a current financial statement to your answers to these interrogatories.

The answer refers the defendants to tax returns produced in compliance with an earlier request for discovery.

In the allegedly libelous publications involved in this case there is at least a clear inference that the plaintiff Rhinehart is a

fraud and engages in fraudulent and deceptive practices for the purpose of extracting substantial sums of money from gullible persons. If the evidence eventually showed that the plaintiff Rhinehart was peniless, it would not necessarily prove that the fraud charges were untrue. On the other hand, if the evidence eventually shows that he is a multimillionaire that evidence would not necessarily prove that the fraud charges are true.

At this time I do not have an adequate basis for ordering Interrogatory No. 42 answered. I will give the defendants fifteen days in which to make a written showing that would justify compelling an answer to Interrogatory No. 42. In the absence of such a showing, no further answer to Interrogatory No. 42 will be required.

Paragraph five of defendants' Motion to Compel Discovery moves for answers to Interrogatories 5, 15, 19, 21, 24 and 27 of Interrogatories to Plaintiff Aquarian Foundation.

Document 47 in Volume 2 of the file in this case contains the answers of the Aquarian Foundation to Defendants' First Interrogatories.

Interrogatory No. 5 to the Aquarian Foundation reads as follows:

> Identify by name, title and address each individual who has been contacted by you, your attorneys, or someone acting on behalf of you or your attorneys in connection with the claims in the complaint.

The answer refers to the eleven people identified in answer to Interrogatory No. 2. The answer then states that persons contacted by the Aquarian Foundation's attorneys is not known to the Board of Directors but is within the knowledge of the attorneys.

If information is discoverable it is no less discoverable because it is within the knowledge of an attorney of the responding party. There being no sustainable objections stated to Interrogatory No. 5, the plaintiff Aquarian Foundation is directed to answer the same.

Interrogatory No. 15 asks questions as to the basis of the damages claimed in this case including the nature of the damages, the basis on which damages are calculated and persons and documents relied upon in calculating the damage claims.

I do not have before me any specific objection to the answer provided to Interrogatory No. 15 and therefore the motion to compel additional response to Interrogatory No. 15 by the Aquarian Foundation is denied.

Interrogatory No. 19 is as follows:

> State the name and address of each bank, credit union, or other lending institution to which you have submitted financial statements in the past ten years.

The answer to Interrogatory No. 19 asserts a right to conceal the location of a bank with which the Aquarian Foundation is doing business on the theory that it would reveal temporary living quarters of persons active in the Foundation including the plaintiff Rhinehart.

Plaintiff will be required to respond fully to Interrogatory No. 19 and the objections stated in the answer is [sic] disallowed.

Interrogatory No. 21 requests the address of certain named persons. Civil Rule 33 requires answers where the information is in the possession, custody or available to the responding party. There being no stated objection to Interrogatory No. 21, the addresses of the named persons will be provided in response to Interrogatory No. 21 if those addresses are available to or in the possession or known to the Aquarian Foundation.

Interrogatory No. 24 reads as follows:

> If you have been the recipient of gifts or donations in the past ten years, state the name and address of each donor, the date of the gift, the amount of the gift and the circumstances of each gift.

This interrogatory goes directly to the issue of the plaintiffs' claim that contributions to the Aquarian Foundation have diminished substantially by reason of the alleged libelous publications.

The objection states that identity of donors is believed to be protected. No basis for the belief is asserted. There being no valid objection stated to the interrogatory, the Aquarian Foundation will answer the same forthwith to the extent that it has the requested information in its custody, possession or available to it.

Interrogatory No. 27 reads as follows:

> State the name and address of everyone who has been a member of the Aquarian Foundation at any time in the past ten years.

The plaintiff objects to this interrogatory on the ground that "it believes names of members are constitutionally protected under the first amendment." The plaintiff cannot assert a claim based on alleged diminished membership in the Foundation and refuse to respond to discovery requests whereby the defendants can test and evaluate the accuracy of this claim.

A similar interrogatory was directed to the plaintiff Rhinehart and the Court extended to the plaintiff Rhinehart an option or an alternative way of providing information by which the defendants could be advised of the basis upon which the plaintiffs will attempt to prove a claim of diminished membership. The same option will be extended to the Aquarian Foundation in respect to Interrogatory No. 27. Paragraph five of defendants' Motion to Compel Discovery requests an order directing the plaintiff Kathi Bailey to respond to Interrogatories Nos. 7, 9, 10, 14, 19, 25, 28, 31, 33, 34, 38, 41 and 42.

Plaintiff Bailey's answers to the Interrogatories were filed July 28, 1980 as document 51 in Volume 2 of the Clerk's file.

Interrogatory No. 7 asks for identity of each individual contacted by her or her attorneys in connection with the claims in the complaint and she states that she does not have information as to persons contacted by her attorneys. This not being a valid objection to the interrogatory and no other objection being stated, plaintiff Bailey will be required to respond fully and completely to Interrogatory No. 7.

Interrogatory No. 9 requests that she identify all documents having any relevance in support of the claims made in the complaint. A response is made to this interrogatory and the Court not being presented with any precise objection to the response as stated, the Motion to Compel Further Answer to Interrogatory No. 9 is denied.

Interrogatory No. 10 reads as follows:

> Identify every corporation, partnership, or association in which you are presently an officer, director, shareholder, partner or member, and also identify each such organization in which you have held any of said positions in the past ten years.

While it would be easy to formulate a precise objection to this interrogatory, none was stated other than "objected to on the grounds of relevance." Objections to interrogatories must be stated with sufficient specificity that an attorney or court reading the objection would know the factual and legal basis for it. There being no adequate objection stated to Interrogatory No. 10, the objection is overruled and the plaintiff Bailey is directed to answer the same.

Interrogatory No. 14 requests identification of each officer and director of the Aquarian Foundation and affiliated or subsidiary organizations. The answer is nonresponsive and the Motion to Compel a Complete Answer to Interrogatory No. 14 is granted.

Interrogatory No. 19 asks specific questions relating to the sources and computation of damages claimed by the plaintiff Bailey.

The answer is unresponsive and the Motion to Compel a Complete Answer to Interrogatory No. 19 is granted.

The Interrogatory [sic] to No. 25 is unresponsive and the Motion to Compel a Complete Answer to Interrogatory No. 25 is granted.

Interrogatory No. 28 deals with gifts and donations to plaintiff Bailey during the past ten years. Not being presented with any

objection to the answer as stated, the Motion to Compel Further Answer of [sic] Interrogatory No. 28 is denied.

Interrogatory No. 31 requests the names and addresses of members of the Aquarian Foundation over the past ten years. The interrogatory is objected to but the objection is based only on the claim of the plaintiff that the names and addresses are "nondiscoverable." This is not a suitable objection. Court will extend to plaintiff Bailey the same option extended to the plaintiff Rhinehart and the plaintiff Aquarian Foundation in connection with responding to this interrogatory.

Interrogatory No. 33 reads as follows:

> To the best of your ability, describe why Keith Milton Rhinehart had breast augmentation surgery.

The answer would appear to assert a privilege possessed only by the plaintiff Rhinehart unless it is interpreted as meaning that plaintiff Bailey has no knowledge with which to respond to the interrogatory. In the absence of a showing by the defendants as to why an answer to this interrogatory should be compelled from plaintiff Bailey no further answer to Interrogatory No. 33 will be required. The defendant will be given fifteen days in which to make such a showing.

Interrogatory No. 34 requests a description from this plaintiff as to why the plaintiff Rhinehart had plastic surgery. The court's ruling will be the same in respect to Interrogatory No. 34 as it was to Interrogatory No. 33.

The Court's ruling will be the same in respect to interrogatory No. 38 as it was in connection with Interrogatories 33 and 34.

Interrogatory No. 41 is as follows:

> Have you ever danced naked before member [sic] of the opposite sex. If the answer is in the affirmative, please give details and describe when and where you performed.

The answer states that the question appears to be in poor taste. This is neither an answer nor an objection. The plaintiff Bailey will be given fifteen days in which to file a specific objection to Interrogatory No. 4 [sic] which objection will be sufficiently

specific so that the Court can rule upon it intelligently. In the absence of the filing of such an objection within fifteen days of receipt of this letter by counsel for plaintiff Bailey, the motion of the defendant to have Interrogatory No. 41 answered will be granted.

Interrogatory No. 42 asks for a statement of current assets and liabilities or a current financial statement and the answer refers the defendants to tax returns to be provided. The Court has no knowledge at this time as to whether or not the tax returns were provided and whether or not they provided sufficient information that further answer to this interrogatory is unnecessary. The defendants will be provided fifteen days in which to furnish the Court with a written showing as to why Interrogatory No. 42 should be answered in full and in the absence of such a showing within fifteen days of receipt of this letter by counsel, no further answer to Interrogatory No. 42 will be required.

Defendants have also moved to compel plaintiff Lillian Young to answer Interrogatories Nos. 7, 10, 31 and 41.

Interrogatory No. 7 relates to persons contacted by her or her attorneys in connection with claims in the complaint.

The answer disclaims knowledge of persons contacted by her attorneys. This is knowledge imputed to the plaintiffs in the discovery process. Interrogatory No. 7 must be answered in full.

Interrogatory No. 10 requests identification of business associations in which plaintiff is an officer, director, shareholder, etc. The objection is "on ground of relevance". This is not an adequate objection and Interrogatory No. 10 must be answered in full.

Interrogatory No. 31 relates to the names and addresses of members of the Aquarian Foundation. The same option under the same circumstances will be extended to plaintiff Lillian Young relative to answering this interrogatory as was extended to other plaintiffs.

Interrogatory No. 41 inquires as to whether or not plaintiff Young has ever danced naked before a member of the opposite sex. The objection appears to be based largely on a claim of irrelevance and the claim that the sole purpose of the interrogatory is to embarrass and degrade the plaintiff. The Court does not have before it adequate information for a ruling on this interrogatory. The objection does not set forth reasons why it is an irrelevant interrogatory. Plaintiff Young shall have fifteen days following receipt of this letter by her counsel in which to state a specific objection to Interrogatory No. 41, otherwise the Motion to Compel a Complete Answer to Interrogatory No. 41 will be granted.

Defendants have also moved to compel the plaintiff Toni Strauch to answer Interrogatories 10, 19, 31 and 41.

Interrogatory No. 10 requests identification of corporations, partnerships or other associations in which she has been an officer, director or shareholder. The interrogatory is answered in part but is objected to in part on ground of relevance. This is not a sufficient objection and the Motion to Compel a Complete Answer to Interrogatory No. 10 is granted.

Interrogatory No. 19 deals with the basis of the damage claim in this case. The answer is clearly unresponsive. The Motion to Compel a Complete Answer to Interrogatory No. 19 is granted.

Interrogatory No. 31 deals with the names and addresses of members of the Aquarian Foundation. The objection is clearly inadequate. The same option will be extended to plaintiff Strauch in answering this interrogatory as was extended in respect to the same interrogatory submitted to other plaintiffs.

Interrogatory No. 41 relates to the subject of dancing naked before members of the opposite sex. Plaintiff Strauch will be given fifteen days in which to state specifically the basis for the objection to this interrogatory and in the absence of such a written objection being filed within fifteen days following receipt by plaintiff's counsel of this letter, the Motion to Compel a Complete Answer to Interrogatory No. 41 will be granted.

The defendants have also moved to compel the plaintiff Taylor to answer Interrogatories 19 and 42.

I do not have before me the response of plaintiff Taylor to those two interrogatories. However, I have ruled on the same interrogatories in respect to other plaintiffs and it is probable that counsel can deal with interrogatories 19 and 42 to plaintiff Taylor based on the Court's rulings in respect to the other plaintiffs where the same interrogatories were answered and/or objected to.

In their Motion to Compel Discovery, defendants also seek strict enforcement of the Subpoena Duces Tecum to Merrill Lynch Pierce Fenner and Smith, Inc. which would compel production at the deposition of all records and files pertaining to plaintiffs Rhinehart and the Aquarian Foundation dealing with purchase and sale of securities, financial statements, internal memoranda concerning customers, customer profiles, and any other material pertaining to any business transaction between Merrill Lynch and either of said plaintiffs.

With the plaintiffs claiming adverse financial developments as a result of the allegedly libelous publications, it is obvious that defendants must be allowed to investigate the basis for this complaint. While evidence of financial transactions with a stockbroker is not direct evidence one way or another of the alleged financial impact of the articles, nevertheless information there discovered could be circumstantial evidence one way or the other and until the records are examined no one would know whether they might or might not lead to the discovery of admissible evidence.

At this time the Court has before it no reason or basis for quashing the subpoena to Merrill Lynch and declines to do so at this time.

The defendants' request for production of documents directed to the Aquarian Foundation resulted in the Foundation making an effort to provide those documents but this effort was made under circumstances where very little discovery, if any, was actually accomplished.

Since counsel for the Aquarian Foundation did not know and couldn't even estimate the number of documents (between 3,000 and 10,000 or more) it is understandable that defendants had a difficult time conducting an examination of the produced documents.

It is the Court's view that the parties should, in effect, start over in respect to the request for production of documents directed by the defendants to the Aquarian Foundation. The Court is left with the impression that neither the plaintiffs nor the defendants followed Rule 34 in connection with this matter. If the defendants wish to pursue the matter, then the Court would direct that a request for production of documents in strict compliance with Rule 34 be initiated and that the response of the plaintiffs to the request also be in strict compliance with Rule 34. This will apply also to the requested production of video and sound tapes. Remaining to be ruled upon is the issue raised by the plaintiffs in claiming a protective order as to any information they are compelled to disclose in the discovery process in this case. Responding to the plaintiffs' claim for a protective order, the defendants assert that the right of a free press under the First Amendment effectively prohibits the Court from entering a protective order of the type sought herein by the plaintiffs.

The plaintiffs urge the Court to enter a protective order that would limit defendants' use of all discovery materials to the purposes of defending this lawsuit. The defendants on the other hand contend that they are entitled to publish any and all materials coming to them from the plaintiffs through the discovery process without any restriction whatsoever.

The case of *In Re Halkin*, 598 F.2d 176 (1979) holds that First Amendment rights extend to discovery materials. The opinion goes on to emphasize that "good cause" must be shown for a protective order. Commencing at page 191 of the opinion, the Court discusses a constitutional standard which must be met in dealing with a collision between claims of confidentiality on the

one hand and First Amendment interests on the other hand. At page 191 the Court states:

> The Court must then evaluate such a restriction on three criteria: the harm posed by dissemination must be substantial and serious; the restraining order must be narrowly drawn and precise; and there must be no alternative means of protecting the public interest which intrudes less directly on expression.

The cases cited on this subject appear to come down to the proposition that when a court is confronted with the question of whether or not good cause exists for a protective order the case must be decided on its own facts with careful attention to the actual discovery materials involved, the extent to which good cause exists for a protective order and the scope of such an order, if one is to be entered, in order to prevent actual damage or a real threat of an unfair trial environment if the device of a protective order is not used.

In deciding *Halkin*, the Court brushed aside conclusory allegations as being insufficient to justify imposition of a protective order which would have had the effect of imposing prior restraint on the freedom of speech and of the press guaranteed by the First Amendment.

At this time, the plaintiff's motion for a protective order will be denied. This denial, however, is without prejudice to plaintiff's right to move for a protective order in respect to specifically described discovery materials and a factual showing of good cause for restraining defendants in their use of those materials.

While I apologize to counsel for the considerable period of time it has taken me to rule on the issues covered in this letter, I hasten to point out that much of the time was consumed in going through the three volumes of files that have accumulated in this case for no purpose than to discover what interrogatories were involved and what answers or responses were made to those interrogatories by the various plaintiffs.

It is very helpful to a court in ruling on motions to compel discovery to have both the interrogatory or particular discovery request involved set forth in the motion along with the objection or a synopsis of the objection so that it will be unnecessary for the court to thumb through the file in order to have this information.

Dated at Seattle, Washington this 25th day of February, 1981.

/s/ Jack P. Scholfield
Presiding Judge
JACK P. SCHOLFIELD

APPENDIX H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 80-2-02460-4

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person, LILLIAN YOUNG, a married person, TONI STRAUCH, a married person, SYLVIA CORWIN, and ILSE TAYLOR, representing women who were members of the Aquarian Foundation on or after March 17, 1978,

Plaintiffs,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times: WALLA WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA WILSON; JOHN MCCOY and KAREN MCCOY,

Defendants.

COMPLAINT FOR DEFAMATION AND INVASION OF PRIVACY

I. PARTIES PLAINTIFF

(a) Plaintiff Keith Milton Rhinehart is a private figure, ecclesiatic [sic] leader of the Aquarian Foundation, and resident of the State of Washington.

(b) Plaintiff the Aquarian Foundation is not-for-profit religious corporation organized under the laws of the State of Washington.

(c) Plaintiffs Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin and Ilse Taylor are women and members of the Aquarian Foundation. Lillian Young is married, the mother of four, and a resident of the State of Hawaii. Kathi Bailey is married, a Washington resident, now domiciled in the State of Hawaii. Toni Strauch is married, a mother and resident of the

State of Hawaii. Sylvia Corwin and Ilse Taylor are residents of the State of Washington.

II. CORPORATE PARTIES DEFENDANT

(a) The Seattle Times Company (hereinafter "Seattle Times") is a corporation incorporated under the laws of the State of Delaware, on information and belief, having its principal place of business in the State of Washington, which distributes its products in the States of Hawaii, Washington, California, Alaska, Oregon and elsewhere.

(b) The Walla Walla Union-Bulletin, Inc. (hereinafter "Walla Walla Union-Bulletin") is a corporation incorporated under the laws of the State of Washington, on information and belief, having its principal place of business in Washington. On information and belief, the Walla Walla Union-Bulletin is affiliated with or owned by or has a correspondent relationship with the Seattle Times.

(c) Both corporate defendants are "for-profit" organizations, deriving their revenue from the distribution and circulation of daily newspapers and other products both within and without the State of Washington.

III. INDIVIDUAL PARTIES DEFENDANT

(a) Erik Lacitis, a staff columnist for the Seattle Times, and Jane Doe Lacitis, his wife, if any, are residents of the State of Washington.

(b) Defendant John Wilson, a writer for the Seattle Times, and Rebecca Wilson, his wife, are residents of the State of Washington.

(c) Defendant John McCoy, a writer for the Walla Walla Union-Bulletin, and Karen McCoy, his wife, are residents of the State of Washington.

(d) All acts complained of with reference to the defendants Lacitis, Wilson and McCoy were done by each of them for and on behalf of their respective marital communities, if any, and plaintiffs seek relief from the named individual parties defendant and their marital communities, if any.

IV. JURISDICTION

All articles herein complained of were written by one or more of the named individual parties defendant and published and disseminated in Washington, Hawaii, Oregon, California, Alaska and elsewhere, for profit, by one or more of the corporate parties defendant. Such publication in all events occurred within, but was not limited to, the State of Washington. Both corporate parties defendant are licensed and authorized to do business in the State of Washington and are doing business in the State of Washington. Both corporate defendants, as daily newspapers of general circulation, distribute for profit, in King County, daily issues of their publication. All individual parties defendant are either residents of King County or were specifically aware that publication of their work would be disseminated for profit within King County.

The court has jurisdiction over subject matter and the parties to this action.

V. SPECIFIC ARTICLES ALLEGED BY ONE OR MORE OF THE PLAINTIFFS TO BE DEFAMATORY AND CONSTITUTE AN INVASION OF PRIVACY

Appendix A-1 through A-10 contains specific excerpts from articles written by one or more of the individual parties defendant, published and disseminated by one or more of the corporate defendants.

Representative excerpts from each of the articles are attached hereto as Appendix A-1 through A-10. The articles themselves and the excerpts included within Appendix A-1

through A-10 are by this reference incorporated herein as though wholly set forth. The defamations and invasions of privacy alleged herein include, but are not limited to these articles. Plaintiffs reserve the right to amend their complaint as discovery proceeds. The title, date of publication, name of publication, and author of known articles are as follows:

1. *Spiritualist's Life Rich in Earthly Rewards*, April 15, 1973 (front page), Seattle Times, John Wilson.

2. *Church and Personal Funds "Kept Separate"*, April 15, 1973, Seattle Times, John Wilson.

3. *The Medium . . . and His Message*, April 15, 1973, Seattle Times, John Wilson.

4. *"Psychic Powers": Proven? Or Are They a "Ripoff"?*, April 15, 1973, Seattle Times, John Wilson.

5. *THE MEDIUM "Henry" Speaks at Aquarian Seance*, April 16, 1973, Seattle Times, John Wilson.

6. *Strange Acquaintance With the Aquarians*, March 16, 1978, Seattle Times, Erik Lacitis.

7. *Modern Miracle? Keith Rhinehart Wowed 'em in Walla Walla*, March 17, 1978, Seattle Times, Erik Lacitis.

8. *The Continuing Saga Of Keith Rhinehart*, April 22, 1978, Seattle Times, Erik Lacitis.

9. *It Was An Incredible Scene for the "Hulk"*, November 5, 1979, Seattle Times, Erik Lacitis.

10. *It Was An Incredible Scene for the "Hulk"*, November 5, 1979, Seattle Times (edition distributed to outlying districts or a later edition of the same paper), Erik Lacitis.

11. *Wo?Man, Mystic, or Charlatan?*, February 17, 1978, Walla Walla Union-Bulletin, John McCoy.

VI. REPUBLICATION OF LIBEL

The article written by Erik Lacitis, published by the defendant The Seattle Times Company in the Seattle Times on March 16, 1978 referred specifically to the series of Seattle Times

stories regarding Keith Milton Rhinehart and the Aquarian Foundation written by defendant John Wilson and published by the Seattle Times Company in 1973. Defendant Erik Lacitis quoted directly from the front page, Sunday, April 15, 1973 article written by John Wilson. The explicit reference in the 1978 publication to the 1973 series of articles republished those articles; the 1973 articles and the 1978 articles which refer thereto constitute a continued and continuous publication of the libel therein with respect to Keith Milton Rhinehart and the Aquarian Foundation.

VII. DEFAMATION OF PARTIES PLAINTIFF

A. Defamation Of Plaintiffs Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, Ilse Taylor And Other Women Members Of the Aquarian Foundation.

1. By The Seattle Times, Erik Lacitis And John Wilson.

Plaintiffs Lillian Young, Kathi Bailey, and Toni Strauch are members of the Aquarian Foundation, and all are married women. Lillian Young is the mother of four children, and Toni Strauch also has children. Sylvia Corwin and Ilse Taylor are also members of the Aquarian Foundation. All were members of the Aquarian Foundation on March 17, 1978. All appear as plaintiffs and as representative of all women members of the Aquarian Foundation, which women members range in age from teenagers to octagenarians, who have suffered injury to their good names, fame and reputation, extreme embarrassment, humiliation, shame, disgrace, and have been held up to public scorn, hatred and ridicule by the publication by defendants Seattle Times on March 17, 1978 of an article entitled *Modern Miracle? Keith Rhinehart Wowed 'Em in Walla Walla*, written by defendant Erik Lacitis, wherein it was recited that:

> "As a chorus line of girls shed their gowns and bikinis and sang 'Sodomy' from the musical 'Hair,' Rhinehart pranced about the stage in a bikini and flowing yellow locks.
>
> "Other Aquarians unpacked boxes of flower leis and flung them to the audience."

Said publication was intended to convey, and was taken by the community at large to mean, women members of the Aquarian Foundation such as Lillian Young, Kathi Bailey, Toni Strauch and others stripped off all theirs clothes and wantonly danced naked, exposing their genitalia in front of 1,100 male prisoners in the Walla Walla penitentiary, while singing a song extolling the virtue of homosexual intercourse.

In truth and fact, the women were not a chorus line—they did not dance. They were not wearing gowns—they were part of a church choir and were formally attired in church choir robes. In a subsequent part of the special presentation the women members of the choir did wear bikinis—which were at no time removed. While music was performed from the Broadway musical *Hair*, Keith Milton Rhinehart was not prancing about the stage—he was not on the stage.

2. By The Walla Walla Union-Bulletin And John McCoy.

Plaintiffs Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, and other women members of the Aquarian Foundation have suffered injury to their good names, fame and reputations, extreme embarrassment, humiliation, shame and disgrace, and have been held up to public scorn, hatred and ridicule by the February 17, 1978 publication by John McCoy and the Walla Walla Union-Bulletin of the article set out in Article V above.

The article, which included pictures, defamed the Aquarian Foundation and its leader, Keith Milton Rhinehart, as more specifically alleged hereinbelow. The article and pictures, by giving publicity to the membership and participation of Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, and other unnamed but pictured women in the Aquarian Foundation church in an article defamatory of the Foundation and its ecclesiatic leader, thereby defamed all of the women individually.

B. Defamation Of Plaintiff Keith Milton Rhinehart.

In writing, publishing and circulating the publications described in Article V above, in the selection of the "psychologically loaded" words used, and in the conscious juxtaposing of oft-repeated inflammatory information and allegations, defendants intended to convey, and did convey to the community at large, the impression that:

1. Keith Milton Rhinehart is a Jim Jones Guyana-like leader of "a bizarre Seattle cult."

2. The Aquarian Foundation is "Rhinehart's cult."

3. That Aquarian members do, and Keith Rhinehart demands that: ". . . his followers, worship a man . . ." (Rhinehart), rather than God.

4. Keith Milton Rhinehart "play[s] at spiritualism."

5. Spiritual phenomenon exhibited by Keith Milton Rhinehart are consciously perpetrated frauds and "sleights-of-hand."

6. The "God-given psychic powers" of Keith Milton Rhinehart and the "seances" he conducts are a "rip off."

7. Lou Ferrigno, star of the television series "Incredible Hulk", who represents to millions of people a symbol of raw power directed solely toward helping others and triumphing over evil, so feared Keith Milton Rhinehart that Mr. Ferrigno had his father train "a gun on him (Rhinehart)" to be ready to "[blow] the guy's head off."

8. Keith Milton Rhinehart dresses as often as a woman as he does as a man.

9. Keith Milton Rhinehart personally and as part of a conscious "rip-off" hawks "dime store jewelry" as "apported stones for hundreds, sometimes thousands of dollars."

10. Keith Milton Rhinehart buys followers and supporters by "promis[ing] them cash prizes and gifts such as pool tables, portable saunas, exercycles, trampolines, tape recorders, radios, and even a $2,000 sex-change operation."

11. Keith Milton Rhinehart used Foundation money or contributions to buy lawyers to manipulate his early release from the sentence he was serving on a sodomy conviction.

12. Keith Milton Rhinehart willingly and voluntarily gave up his privacy and revealed a breast augmentation surgery to a prison guard in the Walla Walla State Penitentiary.

13. A sodomy conviction of Keith Milton Rhinehart still stands.

14. The sodomy conviction of Keith Milton Rhinehart was overturned by a federal district court on some mere technicality proffered by high-priced attorneys during a "long and expensive legal battle."

15. "One old woman willed [Rhinehart] a $261,000 estate."

16. Keith Milton Rhinehart is unfit to be a religious leader.

The defamatory matters, communicated as aforesaid, did and were calculated to hold plaintiff Keith Milton Rhinehart up to public scorn, hatred and ridicule, and to impeach his honesty, integrity, virtue, religious philosophy, reputation as a person and in his profession as a spiritual leader.

C. Defamation Of Plaintiff Aquarian Foundation.

In writing, publishing and circulating the publications described in Article V above, in the selection of the "psychologically loaded" words used, and in the conscious juxtaposing of oft-repeated inflammatory information and allegations, defendants intended to convey, and were understood to mean by the community at large, the impression that:

1. The Aquarian Foundation is a Jim Jones, Guyana-like "bizarre Seattle cult" which is the alter ego of Keith Milton Rhinehart, "cult leader."

2. Through the efforts of Keith Milton Rhinehart, who took the case to court, the Aquarian Foundation

"escaped paying taxes" and thus has shirked responsibilities owed by citizens to the United States.

3. The main emphasis in the Aquarian Foundation religion is on homosexuality.

4. The Aquarian Foundation uses wealth to buy religious converts.

5. The Aquarian Foundation customarily uses a "sales formula" devised by Keith Milton Rhinehart which combines sex, show biz, a seance," and money and "call[s] it religion" to gain followers.

6. There is no segregation of money or contributions between the Aquarian Foundation and Keith Milton Rhinehart.

7. The Aquarian Foundation amasses wealth by selling fraudulently-produced stones for thousands of dollars.

Plaintiff the Aquarian Foundation is a corporation, not for profit, which depends upon financial support primarily from its membership, which is open to the public. The matters published by defendants tend to interfere with its activities by prejudicing it in public estimation. Such communications tend to disparage the religious corporation and the conduct of its activities and thus to obstruct the accomplishments of its corporate purposes. In addition, the articles have, or may have had, the effect of discouraging contributions by the membership and public and thereby diminished the financial ability of the Foundation to pursue its corporate purposes.

The defamation on the Foundation's ecclesiastic leader, in and of itself, constitutes a defamation of the Foundation.

VIII. FALSITY OF ALLEGATIONS AND INNUENDOS

The articles and innuendos therein printed, published and circulated by defendants as set out above, of and concerning women members of the Aquarian Foundation, Keith Milton Rhinehart, and the Aquarian Foundation were fictional and

untrue. Defendants knew, or in the exercise of reasonable care should have known, that the publications were false or would create materially-false impressions. The publications were made by defendants with actual malice and willful intent to injure plaintiffs and their reputations in the community, in their businesses and professions, and to cause great emotional distress. Defendants failed to make reasonable inquiries and were grossly negligent in such failure to inquire into the truth of the facts so published concerning plaintiffs. The falsity of the above-described articles would have been disclosed to defendants had defendants made proper or reasonable inquiry concerning the facts published. The articles were printed, published and circulated by defendants with such reckless and wanton disregard and carelessness as to their truth or falsity as to indicate an utter disregard of the rights of plaintiffs.

As a direct result of defendants' actions in maliciously, negligently and inexcusably exposing plaintiffs Lillian Young, Kathi Bailey, Toni Strauch, Ilse Taylor, Sylvia Corwin, and other women members of the Aquarian Foundation to public hatred, contempt and ridicule, said plaintiffs suffered substantial and great injury and damage, including but not limited to, great embarrassment and humiliation, acute nervousness and mental anguish, and injury to their good names, fame and reputations.

As a direct result of defendants' actions in maliciously, negligently and inexcusably exposing Keith Milton Rhinehart, the Aquarian Foundation and thereby its members to public hatred, contempt and ridicule, Keith Milton Rhinehart suffered and continues to suffer great emotional distress, has feared to return to his home in Seattle, Washington for the last two years, and has been greatly embarrassed and humiliated concerning his body. Because of threats received to his life, he has been required at great expense to install security systems in his residence, and out of fear for his physical safety has been forced to live elsewhere at great expense. His health has been affected and he has suffered and continues to suffer from acute

nervousness, mental anguish, and bodily pain. His good name and reputation have been injured and said publications had, an still have, a tendency to injure plaintiff in his occupation as a religious leader.

As a direct result of defendants' actions in maliciously, negligently and inexcusably exposing the Aquarian Foundation to public hatred, contempt and ridicule, the Aquarian Foundation suffered substantial and great injury and damage, including but not limited to, prejudicing and disparaging the religious foundation in the public estimation, thereby obstructing the accomplishments of its purposes and causing it financial damage in an amount to be proved at trial by preventing it from obtaining donations, and by causing extra cost to relocate Keith Milton Rhinehart and his assistants.

IX. INVASION OF PRIVACY

A. Defendants' Invasion Of Keith Milton Rhinehart's Right Of Privacy.

By writing, printing, publishing and circulating, and selling for profit, the articles as set out above, of and concerning Keith Milton Rhinehart, including pictures taken of him, defendants invaded Keith Milton Rhinehart's right of privacy.

1. Unreasonable Intrusion Upon Seclusion.

Defendants John McCoy and the Walla Walla Union-Bulletin, Inc. unreasonably intruded upon the seclusion of Keith Milton Rhinehart in 1978 by attending, or sending staff to attend, uninvited, the private religious presentation delivered at the Walla Walla State Penitentiary, by taking unauthorized pictures, and further by giving publicity to the events which occurred and pictures taken, in order to thereby profit. Defendants intruded upon some matters not exhibited to public gaze about the plaintiff, including the private fact that he had undergone breast augmentation surgery, and further gave publicity to that private fact.

2. Unreasonable Publicity Given To Private Facts.

Defendants John McCoy, the Walla Walla Union-Bulletin, Inc., the Seattle Times Company, John Wilson, and Erik Lacitis, invaded Keith Milton Rhinehart's right of privacy by giving publicity to matters concerning the private life of Keith Milton Rhinehart, which are not of legitimate concern to the public and the publication of which would be highly offensive to a reasonable person. Without in any way limiting the matters wrongfully given publicity, plaintiff Keith Milton Rhinehart alleges that his privacy was invaded by: (1) the publication and revelation of the fact of his breast augmentation surgery, by such comments as, "Rhinehart, who shares the anatomy of both sexes", (2) by constant republication of a conviction for sodomy without clarifying that that conviction was vacated; because obtained through the knowing use of perjured testimony, and upon the basis of newly-discovered evidence, and (3) by continued republication of and emphasis on the minor part of the religious program during which Keith Milton Rhinehart appeared costumed in women's clothing.

3. Publicity That Unreasonably Created False Light.

Defendants the Walla Walla Union-Bulletin, John McCoy, the Seattle Times Company, John Wilson, and Erik Lacitis invaded the privacy of Keith Milton Rhinehart by giving publicity to matters concerning plaintiff which placed Keith Milton Rhinehart in a false light before the public in a manner which would be highly offensive to a reasonable person. Without limiting in any way the matters to which defendants wrongfully gave such publicity, defendants unreasonably placed Keith Milton Rhinehart in a false light before the public by publishing articles and pictures which created a materially-false impression that Rhinehart dresses as often as a woman as a man, has no religious principle to illustrate thereby, and by constant republication of the sodomy conviction without explaining that it was vacated, and once without even incorrectly describing that it had been "overturned."

Defendants had knowledge or acted in reckless disregard as to the falsity of or the materially-false impression which would be created by the publicized matters, and the false light in which Keith Milton Rhinehart would be placed.

Defendants, by such invasion of Keith Milton Rhinehart's privacy, have harmed his interest in privacy, and caused and continue to cause him great mental distress.

B. Defendants' Invasion Of The Rights Of Privacy Of Lillian Young, Kathi Bailey, And Other Women Members Of the Aquarian Foundation.

By writing, printing, publishing and circulating the March 17, 1978 article set out in Article V above, of and concerning plaintiffs, defendants Erik Lacitis and the Seattle Times Company invaded the rights of privacy of Lillian Young, Kathi Bailey, Toni Strauch, Ilse Taylor, Sylvia Corwin, and other women who were members of the Aquarian Foundation in 1978.

1. Unreasonable Intrusion Upon Seclusion.

Defendants John McCoy and the Walla Walla Union-Bulletin, Inc. unreasonably intruded upon the seclusion of Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, and other women members of the Aquarian Foundation in 1978 by attending, or sending staff to attend, uninvited, the private religious services performed at the Walla Walla State Penitentiary, by taking unauthorized pictures, by giving publicity to the events which occurred and pictures taken, and by selling for profit the publications and pictures.

2. Publicity That Unreasonably Created False Light.

Defendants Erik Lacitis and the Seattle Times invaded the privacy of Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, Ilse Taylor, and other women members of the Aquarian Foundation by giving publicity to matters which

unreasonably placed plaintiffs in a false light before the public in a manner which would be highly offensive to a reasonable person. Defendants created the materially-false impression that plaintiffs stripped off all their clothes and wantonly danced naked exposing their genitalia in front of 1,100 male inmates. Defendants had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which plaintiffs would be placed.

Defendants, by such invasion of privacy, have harmed Lillian Young, Kathi Bailey, Toni Strauch, Sylvia Corwin, Ilse Taylor, and other women members of the Aquarian Foundation in their interest in privacy, and caused and continued to cause them great mental distress.

C. Falsity, Sensationalism And Intent Of Articles.

The articles and pictures were written, published and circulated, and their entire content and tone was created in a sensationalist manner calculated to sell papers and make a profit by arousing public interest and inflaming the readers' senses. Defendants intended to profit by exploiting private facts and false impressions, and by heralding sex, religion, fraud, money and extravagent gifts, unusual psychic powers, and homosexuality. The articles, including grabby headlines such as *Wo?Man, Mystic, Or Charlatan?* were designed for the sole purpose of creating reader interest for the aggrandizement of the papers, to the total disregard and disrespect of plaintiffs' rights and interests in privacy.

IX. PRAYER FOR RELIEF

WHEREFORE, come now the plaintiffs and for relief against defendants and each of them, jointly and severally, pray:

1. Against the Seattle Times Company, John Wilson, Erik Lacitis and their marital communities:

(a) With respect to his defamation action, Keith Milton Rhinehart prays for damages in an amount to

proved at time of trial, but believed to be, and therefore alleged to be, not less than $1,000,000.

(b) With respect to his action for invasion of privacy, Keith Milton Rhinehart prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $1,000,000.

(c) With respect to its action for defamation, the Aquarian Foundation prays for damages in an amount to be proved at trial, but believed to be, and therefore alleged to be, not less than $260,000.

(d) With respect to her action for defamation, plaintiff Lillian Young prays for damages for pain and suffering, humiliation and mental anguish in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $500,000, and for punitive damages pursuant to Hawaii State law of an additional $500,000.

(e) With respect to her action for invasion of privacy, Lillian Young prays for damages in the amount be proved at time at trial, but believed to be, and therefore alleged to be not less than $500,000, and for punitive damages pursuant to Hawaii State law of an additional $500,000.

(f) With respect to her defamation action, plaintiff Kathi Bailey prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $500,000.

(g) With respect to her action for invasion of privacy, Kathi Bailey prays for damages in an amount to be proved at time of trial, but believed to be and therefore alleged to be, not less than $200,000.

(h) With respect to her action for defamation, plaintiff Toni Strauch prays for damages for pain and suffering, humiliation and mental anguish in an amount to be made definite at time of trial, but believed to be and therefore alleged to be, not less than $500,000, and for punitive damages pursuant to Hawaii State law of an additional $500,000.

(i) With respect to her action for invasion of privacy, Toni Strauch prays for damages in an amount to be proved

at time of trial, but believed to be, and therefore alleged to be, not less than $500,000, and for punitive damages pursuant to Hawaii State law of an additional $500,000.

(j) With respect to her action for defamation, plaintiff Sylvia Corwin prays for damages for pain and suffering, humiliation and mental anguish in an amount to be made definite at time of trial, but believed to be and therefore alleged to be, not less than $500,000.

(k) With respect to her action for invasion of privacy, plaintiff Sylvia Corwin prays for damages in an amount to be proved at time of trial but believed to be, and therefore alleged to be, not less than $500,000.

(l) With respect to her action for defamation, plaintiff Ilse Taylor prays for damages for pain, suffering, humiliation and mental anguish in an amount to be made definite at time of trial, but believed to be and therefore alleged to be, not less than $500,000.

(m) With respect to her action for invasion of privacy, Ilse Taylor prays for damages in an amount to be proved at time of trial but believed to be, and therefore alleged to be, not less than $500,000.

2. Against defendants Walla Walla Union-Bulletin, Inc., John McCoy, and his marital community:

(a) With respect to his defamation cause of action, Keith Milton Rhinehart prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $1,000,000.

(b) With respect to his action for invasion of privacy, Keith Milton Rhinehart prays for damages in an amount to be proved at time of trail, but believed to be, and therefore alleged to be, not less than $1,000,000.

(c) With respect to its action for defamation, the Aquarian Foundation prays for damages in an amount to be proved at time of trial, but believed to be and therefore alleged to be, not less than $500,000.

(d) With respect to her action for defamation, plaintiff Lillian Young prays for damages in an amount to be

proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000, and for punitive damages pursuant to Hawaii State law of an additional $200,000.

(e) With respect to her action for invasion of privacy, plaintiff Lillian Young prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000, and for punitive damages pursuant to Hawaii State law of an additional $200,000.

(f) With respect to her defamation action, plaintiff Kathi Bailey prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000.

(g) With respect to her action for invasion of privacy, Kathi Bailey prays for damages in an amount to be proved at time of trial, but believed to be and therefore alleged to be, not less than $60,000.

(h) With respect to her action for defamation, plaintiff Toni Strauch prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000, and for punitive damages pursuant to Hawaii State law of an additional $200,000.

(i) With respect to her action for invasion of privacy, plaintiff Toni Strauch prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000, and for punitive damages pursuant to Hawaii State law of an additional $200,000.

(j) With respect to her action for defamation, plaintiff Ilse Taylor prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000.

(k) With respect to her action for invasion of privacy, plaintiff Ilse Taylor prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000.

(l) With respect to her defamation action, plaintiff Sylvia Corwin prays for damages in an amount to be proved at

time of trial, but believed to be, and therefore alleged to be, not less than $200,000.

(m) With respect to her action for invasion of privacy, plaintiff Sylvia Corwin prays for damages in an amount to be proved at time of trial, but believed to be, and therefore alleged to be, not less than $200,000.

3. As against all defendants, on behalf of all plaintiffs, for attorneys' fees, costs of suit, and for such further and other relief as to the court may seem just.

DATED this 15 day of February, 1980.

GODDARD AND WETHERALL

By /s/ _____
Linda E. Collier

By /s/ _____
Jack E. Wetherall

/s/ STATE OF U.S. Virgin Island

/s/ COUNTY OF St. Thomas — St. John

KEITH MILTON RHINEHART, being first duly sworn on oath, deposes and states:

That I am one of the plaintiffs in the above-captioned cause. I have read the within the foregoing COMPLAINT OF DEFAMATION AND INVASION OF PRIVACY, know the contents thereof, and believe the same to be true.

/s/ KEITH MILTON RHINEHART
Keith Milton Rhinehart

SUBSCRIBED AND SWORN to before me this 8th day of February, 1980.

/s/ Daniel W. Auebrose

DANIEL W. AUEBROSE
Notary Public in and for the
State of U.S. Virgin Islands
Residing at St. Thomas

STATE OF WASHINGTON) ss.
COUNTY OF KING

/s/ WILLIAM K. ERICKSON, being first duly sworn on oath, deposes and states:

That I am the Corporate Secretary of the Aquarian Foundation, one of the plaintiffs in the above-captioned cause. I have read the within and foregoing COMPLAINT FOR DEFAMATION AND INVASION OF PRIVACY, know the contents thereof, and believe the same to be true.

/s/ WILLIAM K. ERICKSON

SUBSCRIBED AND SWORN to before me this 11th day of February, 1980.

/s/ GRETA L. HARRIS

Notary Public in and for the
State of Washington, Residing
at Bothell

APPENDIX A

A-1: *Spiritualist's Life Rich in Earthly Rewards*, April 15, 1973 (front page, Sunday Edition), Seattle Times, John Wilson:

> "Whatever else there is—or isn't—in Keith Milton Rhinehart's life as a Seattle spiritualist, there is unquestionably money. A lot of it.
>
> "Money for expensive automobiles, gifts, travels, investment, and attorneys' fees.
>
> "Money from seances.
>
> "Money from the sale of 'precious stones, blessed by the masters, which had been apported' (produced) from Rhinehart's body.
>
> "Money from an 85-year-old woman who willed Rhinehart's church her $261,000 estate.
>
> "There is controversy, too. A lot of it.
>
> "Controversy from a police raid 18 years ago in Denver, resulting in conviction for Rhinehart and police account of how the seance actually worked.
>
> "Controversy at a seance last year at a Canadian college when a near-riot broke out after a student hidden backstage said it was all 'a rip off.'
>
> "Controversy over the basic belief of Rhinehart's church, that he can commune with the spirit world.
>
> "Out of it all, Rhinehart seems to emerge no worse for wear, still driving his $10,000 automobile, still—in his own words—making more money than most mediums. Still convincing people of his special 'god-given psychic powers.'
>
> "Still controversial. Still the money comes in."

A-2: *Church and Personal Funds Kept "Separate"*, April 15, 1973, Seattle Times, John Wilson:

> In 1969, Rhinehart won the court case and the Foundation escaped paying taxes on the estate. . . .
>
> . . .

"Rhinehart said the church had about 1,000 members in the Seattle area, but it declined when he served 2-1/2 years in prison on a sodomy conviction that was later overturned in federal court."

A-3: *The Medium . . . and His Message*, April 15, 1973, Seattle Times, John Wilson:

"Keith Milton Rhinehart's long, wavy hair hangs below his shoulders. In private he smokes, wears an expensive leather jacket, and pegged, black denim pants.

"Mrs. Gostas said Rhinehart would visit her son, George, and both boys 'would play at spiritualism.' 'He was driving a big car—a Cadillac or something—and the other kids were still walking.'

"AFTER HIGH SCHOOL Rhinehart was doing more than playing at holding seances, for seances supplied the money to pay for the expensive automobile.

" 'I met a homosexual teacher, and he took me to some of the homosexual places in Seattle,' Rhinehart said.

"This visit was later to play a big part in Rhinehart's decision to found a church here.

". . . he said he decided to operate out of Seattle for several reasons.

"Added to Seattle's liberal treatment of homosexuals was the fact that the state took no action against activities by mediums.

"AS A 21ST BIRTHDAY present the church gave its young medium his first trip around the world.

". . . In 1965, Rhinehart was arrested and charged with sodomy involving a 16-year-old boy. He was convicted and served 2-1/2 years in state prison but a long and expensive legal battle resulted in the conviction being overturned in federal court.

"United States District Judge William P. Gray said the sodomy conviction was 'based on testimony of extremely doubtful credibility.' . . .

"O'Connor said he carried thousands of dollars back to

Seattle for Rhinehart, carrying the money in a bank bag stuck in the waist of his pants.

"O'Connor said he did not know this source of all the money but he recalled that one woman, about 70, said she had paid $10,000 for a stone.

"THE STONE 'blessed by the masters,' supposedly had been sent by the spirits and expelled from Rhinehart's body."

A-4: *"Henry" Speaks at Aquarian Seance*, April 16, 1973, Seattle Times, John Wilson:

"It was convincing. Several women cried. Rhinehart, or the 'voice', seemed to know uncanny things about what had happened in their lives.

"But it was impossible to judge, without knowing whom he was talking about and whom he was talking to.

"It was the performance that was convincing.

". . . Rhinehart led the singing of another song and called for a 'sharing of consciousness.'

"In the old-famous term it was collection time."

A-5: *Strange Acquaintance With Aquarians*, March 16, 1978, Seattle Times, Erik Lacitis:

"I have been working on this story for a week, and every time I think this can't get any wierder, it gets wierder [sic].

"In the course of researching it, I've been shown a white robe stained with what is supposed to be the blood of Jesus Christ.

"I have watched a video tape of a mystic who spews out 'gems' from his mouth that he says have been spontaneously created.

"I have looked at photos of an incredible day-long vaudeville that shows this same mystic—who sometimes dresses like a man, sometimes like a woman—put on last month at the penitentiary at Walla Wall [sic]. To get 1,100 of the prison's 1,600 inmates to attend the show, the mystic gave away $35,000 in

cash, pool tables, television sets and other prizes, including a $2,000 sex-change operation.

"The story centers on the Rev. Keith Milton Rhinehart, 42, spiritual leader of the Aquarian Foundation, based in Seattle.

"Rhinehart does not like to talk to the press, especially after a Times series of articles about him in 1973.

" 'Whatever else there is—or isn't—in Keith Milton Rhinehart's life as a Seattle spiritualist, there is unquestionably money. A lot of it,' the series began.

" 'Money for expensive automobiles, travels, investments and attorneys' fees. Money from seances. Money from the sale of precious stones blessed by the masters . . .

" 'Money from an 85-year-old woman who willed Rhinehart's church her $261,000 estate. There is controversy, too. Controversy from a police raid 18 years ago in Denver (on charges of obtaining money at a seance under false pretense, fortune-telling and operating a confidence game) resulting in conviction for Rhinehart.'

". . . In 1973, Rhinehart said the group's membership once as 1,000 in Seattle, but declined after he spent 2-1/2 years in prison on a sodomy conviction that later was overturned in federal court.

"The moment you walk into the old home, you are surrounded by displays of objects labeled as 'apported' (produced) from Rhinehart's body. Most of it looks like dime-store jewelry."

A-6: *Modern Miracle? Keith Rhinehart Wowed 'Em in Walla Walla*, March 17, 1978, Seattle Times, Erik Lacitis:

"The Aquarian Foundation church is like no church I've ever seen. Last Sunday in front, where the altar is supposed to be, there was a huge TV screen.

". . . One way that Rhinehart gains converts is by what he says of his ability to spontaneously shed 'precious stones' from his body. If that's true, it'd be nothing less than a miracle.

. . .

"On that date, Keith Rhinehart held an incredible six-hour-long show for the inmates in which he gave away $35,000 in merchandise and money, and presented vaudeville acts ranging from a 76-year-old woman saxaphone [sic] player, to hula dancers, to a chorus line of girls wearing bikinis.

"Rhinehart said all he wanted to do was help the convicts become better persons. Perhaps that was the case. The inmates certainly didn't have much money they could give Rhinehart, as have some of his followers in Seattle.

"Or, perhaps it was Keith Rhinehart's peculiar way of staging a triumphal return to the prison, where he served 2-1/2 years on a morals charge involving a male youth, a conviction later overturned in federal court.

"At any rate, Rhinehart, his long-bleach-blond hair flowing past his shoulders, got 1,100 of the 1,600 inmates at the prison to attend his show with a simple gimmick. He promised them cash prizes and gifts such as pool tables, portable saunas, exercycles, trampolines, tape recorders, radios, and even a $2,000 sex-change operation.

. . .

"To qualify for them [prizes], the convicts had to listen to the Aquarian Foundation message: . . .

". . . This time, he was wearing a white, sequined dress, and a long, brown wig. He swished as he walked.

. . .

" 'As a chorus line of girls shed their gowns and bikinis and sang "Sodomy" from the musical "Hair", Rhinehart pranced about the stage in a bikini and flowing yellow locks.'

"All I see are these people, his followers, worshipping a man once convicted of operating a confidence game.

"I'd rather be playing pinball. All I'll lose there is 25 cents."

A-7: *The Continuing Saga of Keith Rhinehart*, April 22, 1978, Seattle Times, Erik Lacitis:

> "The saga of Keith Milton Rhinehart, the bizarre Seattle mystic about whom I wrote last month, continues.
>
> . . .
>
> "Rhinehart, 42, once convicted of obtaining money at a Denver seance under false pretense, fortune-telling and operating a confidence game, started the foundation in 1955. He claims he can 'apport' (produce) gems and other objects that have special mystical powers from his body.
>
> "Rhinehart, who sometimes dresses like a woman, sometimes like a man, also claims he has 'apported' a robe stained with Jesus Christ's blood. He has hundreds of followers who believe he can perform such miracles, and have donated thousands of dollars to his organization. One old woman willed him a $261,000 estate.
>
> . . .
>
> "Rhinehart said all he wanted to do was help convicts become better persons. But perhaps the show was his way of stating a triumphal return to the prison, where he once served time on a morals conviction.
>
> . . .
>
> "I then told McIntyre of the letters and phone calls I had received from former members of the foundation, who told me they had been urged to buy 'apported' stones for hundreds, sometimes thousands of dollars.'

A-8: *It Was an Incredible Scene for the "Hulk"*, November 5, 1979, Seattle Times, Erik Lacitis:

> "How did Lou Ferrigno, TV's Incredible Hulk, become involved with the bizarre Seattle cult headed by Keith Milton Rhinehart?
>
> "Rhinehart, who also uses the name 'Master Kumara', bills himself as 'the most incredible and unique guru on the planet.' He is quite a strange person. He sometimes dresses like a woman, sometimes like a man. He claims he can produce gems and

other objects—including objects two or three feet in height—from his eyes, mouth, sides, thighs, and skin.

. . .

"This past weekend, I contacted Ferrigno by phone in Los Angeles. I explained to him my interest in Rhinehart's cult, about which I wrote several columns last year. To summarize:

"Rhinehart, now 43, was convicted in 1954 of obtaining money at a Denver seance under false pretenses, fortune-telling and operating a confidence game. He was 18 then. A year later, he started the Aquarian Foundation. . . . Rhinehart does not like the press. Last year, crying and yelling into the phone, he told me . . .

"Ferrigno said he found it hard to believe some of Rhinehart's claims. He was asked if he didn't think that consenting to be Rhinehart's bodyguard gave the appearance he endorsed the cult leader.

" 'No way am I involved,' Ferrigno said. 'It was like I told him (Rhinehart), if you ever say I'm a member, I'll sue you.' "

A-9: *It Was An Incredible Scene for the "Hulk"*, November 5, 1979, Seattle Times (edition distributed to outlying districts or a later edition of the same paper), Erik Lacitis:

"Ferrigno said his family attended the event. He said he was especially glad his father was there.

" 'You know that he's a lieutenant in the police department, and he had a gun on him (Rhinehart). If anything had happened to me, he'd have blown the guy's head off,' Ferrigno said."

A-10: *Wo?Man, Mystic, or Charlatan?*, February 17, 1978, Walla Walla Union-Bulletin, John McCoy:

"Combine sex, show biz, a seance, $50,000 in gifts and prize money, call it religion and you bet it will sell.

"That's the sale formula the Rev. Keith Milton Rhinehart, founder and guru of a Seattle-based spiritualist religion called the Aquarian Foundation

brought to a packed auditorium of 1,100 inmates at the Washington State Penitentiary last Sunday.

"Rhinehart assembled a vaudeville extravaganza featuring singers, hired hula dancers, Samona [sic] fire-eaters, a 76-year old granny tooting a mean saxaphone [sic] and a bikini-clad chorus line of shapely young ladies.

"The 'Master Kumara' himself claimed to flash back to previous lives, communicate with the dead and pull gems from his ears, cheeks, neck and eyes. He wore nearly a dozen outfits ranging from a metallic silver jumpsuit to a fur-fringed mini shirt to a gold bikini bottom and silver pasties. To season the pudding, Rhinehart dispensed certificates he claimed were good for a total of $50,000 in money and merchandise like tape-recorders, televisions and pool tables. (One was a $2,000 grant for a sex-change operation.)

"All in the name of religion.

"For the 41-year-old medium it was a triumphal return to the penitentiary and a grand opportunity to proselytize a captive audience. With the exception of one earlier visit, the last time Rhinehart was inside the walls he did a two-and-a-half-year stint on a sodomy conviction. That sentence was 'vacated' or wiped clean, and Rhinehart was released in 1969.

"Despite his early release and a 'clean slate,' Rhinehart's imprisonment put a crimp on what had swelled to be a 1,000-member spiritualist church.

. . .

"He told another inmate, 'you're going to see the person you once loved in California.' And again, a cash sweetener.

. . .

"Asked if he thought the crowd was 'buying it' one penitentiary guard replied, 'I don't think the majority are that dumb.'

. . .

"Rhinehart rewarded the threesome by presenting them their choice of the largest of the following 'golden stones.'

"Trick or no trick, Rhinehart's popping gems were his final proof in the culmination of the show. Now it was time to entertain.

"In rapid succession, he appeared in a white sequined dress with a long red-haired wig, then a snug, silver dress slit up the side with a touseled wig and then a green and white gown with a white turban and a paste-on black beard.

"So much for religion, this was show biz and sex.

". . . Backstage, Rhinehart, who shares the anatomy of both sexes (he told one prison guard he only went half way with his sex-change operation), talked about sex.

". . . Consequently, Rhinehart admits to being neither male nor female and looks like both.

"If there are questions about Rhinehart's sex, there are also questions about his money.

". . . Penitentiary officials did receive 102 tape recorders to disburse and assumed inmate accounts would be credited the $50, and $100, even $1,000 grants Rhinehart awarded.

"Where did it all come from?

"Newspaper accounts record that the Aquarian Foundation received a $261,000 estate in 1967 and laid claim to another $200,000 estate the same year. Other than that, the record is bare. When asked, Aquarians shrug their shoulders and chalk it up to 'little old ladies.'

"A Seattle police spokesman said Aquarian fund raising appeared to be above board and 'there is no ongoing investigation concerning them.'

"But wherever it came from, Rhinehart blew a wad last Sunday."